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# Presidential Documents

**Title 3—**

**The President**

**Executive Order 13880 of July 11, 2019**

## Collecting Information About Citizenship Status in Connection With the Decennial Census

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1.** *Purpose.* In *Department of Commerce* v. *New York,* No. 18–966 (June 27, 2019), the Supreme Court held that the Department of Commerce (Department) may, as a general matter, lawfully include a question inquiring about citizenship status on the decennial census and, more specifically, declined to hold that the Secretary of Commerce's decision to include such a question on the 2020 decennial census was ''substantively invalid.'' That ruling was not surprising, given that every decennial census from 1820 to 2000 (with the single exception of 1840) asked at least some respondents about their citizenship status or place of birth. In addition, the Census Bureau has inquired since 2005 about citizenship on the American Community Survey—a separate questionnaire sent annually to about 2.5 percent of households.

The Court determined, however, that the explanation the Department had provided for including such a question on the census was, in the circumstances of that case, insufficient to support the Department's decision. I disagree with the Court's ruling, because I believe that the Department's decision was fully supported by the rationale presented on the record before the Supreme Court.

The Court's ruling, however, has now made it impossible, as a practical matter, to include a citizenship question on the 2020 decennial census questionnaire. After examining every possible alternative, the Attorney General and the Secretary of Commerce have informed me that the logistics and timing for carrying out the census, combined with delays from continuing litigation, leave no practical mechanism for including the question on the 2020 decennial census.

Nevertheless, we shall ensure that accurate citizenship data is compiled in connection with the census by other means. To achieve that goal, I have determined that it is imperative that all executive departments and agencies (agencies) provide the Department the maximum assistance permissible, consistent with law, in determining the number of citizens and noncitizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective. When the Secretary of Commerce decided to include the citizenship question on the census, he determined that such a question, in combination with administrative records, would provide the most accurate and complete data. At that time, the Census Bureau had determined based on experience that administrative records to which it had access would enable it to determine citizenship status for approximately 90 percent of the population. At that point, the benefits of using administrative records were limited because the Department had not yet been able to access several additional important sets of records with critical information on citizenship. Under the Secretary of Commerce's decision memorandum directing the Census Bureau ''to further enhance its administrative record data sets'' and ''to obtain as many additional Federal and state administrative records as possible,'' the Department has sought access to several such sets of records maintained by other agencies, but it remains in negotiations to secure access.

The executive action I am taking today will ensure that the Department will have access to all available records in time for use in conjunction with the census.

Therefore, to eliminate delays and uncertainty, and to resolve any doubt about the duty of agencies to share data promptly with the Department, I am hereby ordering all agencies to share information requested by the Department to the maximum extent permissible under law.

Access to the additional data identified in section 3 of this order will ensure that administrative records provide more accurate and complete citizenship data than was previously available.

I am also ordering the establishment of an interagency working group to improve access to administrative records, with a goal of making available to the Department administrative records showing citizenship data for 100 percent of the population. And I am ordering the Secretary of Commerce to consider mechanisms for ensuring that the Department's existing data-gathering efforts expand the collection of citizenship data in the future.

Finally, I am directing the Department to strengthen its efforts, consistent with law, to obtain State administrative records concerning citizenship.

Ensuring that the Department has available the best data on citizenship that administrative records can provide, consistent with law, is important for multiple reasons, including the following.

First, data on the number of citizens and aliens in the country is needed to help us understand the effects of immigration on our country and to inform policymakers considering basic decisions about immigration policy. The Census Bureau has long maintained that citizenship data is one of the statistics that is ''essential for agencies and policy makers setting and evaluating immigration policies and laws.''

Today, an accurate understanding of the number of citizens and the number of aliens in the country is central to any effort to reevaluate immigration policy. The United States has not fundamentally restructured its immigration system since 1965. I have explained many times that our outdated immigration laws no longer meet contemporary needs. My Administration is committed to modernizing immigration laws and policies, but the effort to undertake any fundamental reevaluation of immigration policy is hampered when we do not have the most complete data about the number of citizens and non-citizens in the country. If we are to undertake a genuine overhaul of our immigration laws and evaluate policies for encouraging the assimilation of immigrants, one of the basic informational building blocks we should know is how many non-citizens there are in the country.

Second, the lack of complete data on numbers of citizens and aliens hinders the Federal Government's ability to implement specific programs and to evaluate policy proposals for changes in those programs. For example, the lack of such data limits our ability to evaluate policies concerning certain public benefits programs. It remains the immigration policy of the United States, as embodied in statutes passed by the Congress, that ''aliens within the Nation's borders [should] not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations'' and that ''the availability of public benefits [should] not constitute an incentive for immigration to the United States'' (8 U.S.C. 1601(2)). The Congress has identified compelling Government interests in restricting public benefits ''in order to assure that aliens be self-reliant in accordance with national immigration policy'' and ''to remove the incentive for illegal immigration provided by the availability of public benefits'' (8 U.S.C. 1601(5), (6)).

Accordingly, aliens are restricted from eligibility for many public benefits. With limited exceptions, aliens are ineligible to receive supplemental security income or food stamps (8 U.S.C. 1612(a)). Aliens who are ''qualified aliens''—that is, lawful permanent residents, persons granted asylum, and certain

other legal immigrants—are, with limited exceptions, ineligible to receive benefits through Temporary Assistance for Needy Families, Medicaid, and State Children's Health Insurance Program for 5 years after entry into the United States (8 U.S.C. 1613(a)). Aliens who are not ''qualified aliens,'' such as those unlawfully present, are generally ineligible for Federal benefits and for State and local benefits (8 U.S.C. 1611(a), 1621(a)).

The lack of accurate information about the total citizen population makes it difficult to plan for annual expenditures on certain benefits programs. And the lack of accurate and complete data concerning the alien population makes it extremely difficult to evaluate the potential effects of proposals to alter the eligibility rules for public benefits.

Third, data identifying citizens will help the Federal Government generate a more reliable count of the unauthorized alien population in the country. Data tabulating both the overall population and the citizen population could be combined with records of aliens lawfully present in the country to generate an estimate of the aggregate number of aliens unlawfully present in each State. Currently, the Department of Homeland Security generates an annual estimate of the number of illegal aliens residing in the United States, but its usefulness is limited by the deficiencies of the citizenship data collected through the American Community Survey alone, which includes substantial margins of error because it is distributed to such a small percentage of the population.

Academic researchers have also been unable to develop useful and reliable numbers of our illegal alien population using currently available data. A 2018 study by researchers at Yale University estimated that the illegal alien population totaled between 16.2 million and 29.5 million. Its modeling put the likely number at about double the conventional estimate. The fact is that we simply do not know how many citizens, non-citizens, and illegal aliens are living in the United States.

Accurate and complete data on the illegal alien population would be useful for the Federal Government in evaluating many policy proposals. When Members of Congress propose various forms of protected status for classes of unauthorized immigrants, for example, the full implications of such proposals can be properly evaluated only with accurate information about the overall number of unauthorized aliens potentially at issue. Similarly, such information is needed to inform debate about legislative proposals to enhance enforcement of immigration laws and effectuate duly issued removal orders.

The Federal Government's need for a more accurate count of illegal aliens in the country is only made more acute by the recent massive influx of illegal immigrants at our southern border. In Proclamation 9822 of November 9, 2018 (Addressing Mass Migration Through the Southern Border of the United States), I explained that our immigration and asylum system remains in crisis as a consequence of the mass migration of aliens across our southern border. As a result of our broken asylum laws, hundreds of thousands of aliens who entered the country illegally have been released into the interior of the United States pending the outcome of their removal proceedings. But because of the massive backlog of cases, hearing dates are sometimes set years in the future and the adjudication process often takes years to complete. Aliens not in custody routinely fail to appear in court and, even if they do appear, fail to comply with removal orders. There are more than 1 million illegal aliens who have been issued final removal orders from immigration judges and yet remain at-large in the United States.

Efforts to find solutions that address the immense number of unauthorized aliens living in our country should start with accurate information that allows us to understand the true scope of the problem.

Fourth, it may be open to States to design State and local legislative districts based on the population of voter-eligible citizens. In *Evenwel* v. *Abbott,* 136 S. Ct. 1120 (2016), the Supreme Court left open the question whether ''States may draw districts to equalize voter-eligible population rather than

total population.'' Some States, such as Texas, have argued that ''jurisdictions may, consistent with the Equal Protection Clause, design districts using any population baseline—including total population and voter-eligible population—so long as the choice is rational and not invidiously discriminatory''. Some courts, based on Supreme Court precedent, have agreed that State districting plans may exclude individuals who are ineligible to vote. Whether that approach is permissible will be resolved when a State actually proposes a districting plan based on the voter-eligible population. But because eligibility to vote depends in part on citizenship, States could more effectively exercise this option with a more accurate and complete count of the citizen population.

The Department has said that if the officers or public bodies having initial responsibility for the legislative districting in each State indicate a need for tabulations of citizenship data, the Census Bureau will make a design change to make such information available. I understand that some State officials are interested in such data for districting purposes. This order will assist the Department in securing the most accurate and complete citizenship data so that it can respond to such requests from the States.

To be clear, generating accurate data concerning the total number of citizens, non-citizens, and illegal aliens in the country has nothing to do with enforcing immigration laws against particular individuals. It is important, instead, for making broad policy determinations. Information obtained by the Department in connection with the census through requests for administrative records under 13 U.S.C. 6 shall be used solely to produce statistics and is subject to confidentiality protections under Title 13 of the United States Code. Information subject to confidentiality protections under Title 13 may not, and shall not, be used to bring immigration enforcement actions against particular individuals. Under my Administration, the data confidentiality protections in Title 13 shall be fully respected.

**Sec. 2**. *Policy.* It is the policy of the United States to develop complete and accurate data on the number of citizens, non-citizens, and illegal aliens in the country. Such data is necessary to understand the effects of immigration on the country, and to inform policymakers in setting and evaluating immigration policies and laws, including evaluating proposals to address the current crisis in illegal immigration.

**Sec. 3**. *Assistance to the Department of Commerce and Maximizing Citizenship Data.* (a) All agencies shall promptly provide the Department the maximum assistance permissible, consistent with law, in determining the number of citizens, non-citizens, and illegal aliens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective. In particular, the following agencies shall examine relevant legal authorities and, to the maximum extent consistent with law, provide access to the following records:

(i) Department of Homeland Security, United States Citizenship and Immigration Services—National-level file of Lawful Permanent Residents, Naturalizations;

(ii) Department of Homeland Security, Immigration and Customs Enforcement—F1 & M1 Nonimmigrant Visas;

(iii) Department of Homeland Security—National-level file of Customs and Border Arrival/Departure transaction data;

(iv) Department of Homeland Security and Department of State, Worldwide Refugee and Asylum Processing System—Refugee and Asylum visas;

(v) Department of State—National-level passport application data;

(vi) Social Security Administration—Master Beneficiary Records; and

(vii) Department of Health and Human Services—CMS Medicaid and CHIP Information System.

(b) The Secretary of Commerce shall instruct the Director of the Census Bureau to establish an interagency working group to coordinate efforts, consistent with law, to maximize the availability of administrative records in connection with the census, with the goal of obtaining administrative records that can help establish citizenship status for 100 percent of the population. The Director of the Census Bureau shall chair the working group, and the head of each agency shall designate a representative to the working group upon request from the working group chair.

(c) To ensure that the Federal Government continues to collect the most accurate information available concerning citizenship going forward, the Secretary of Commerce shall consider initiating any administrative process necessary to include a citizenship question on the 2030 decennial census and to consider any regulatory changes necessary to ensure that citizenship data is collected in any other surveys and data-gathering efforts conducted by the Census Bureau, including the American Community Survey. The Secretary of Commerce shall also consider expanding the distribution of the American Community Survey, which currently reaches approximately 2.5 percent of households, to secure better citizenship data.

(d) The Department shall strengthen its efforts, consistent with law, to gain access to relevant State administrative records.

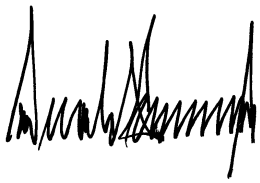
**Sec. 4**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
*July 11, 2019.*

[FR Doc. 2019–15222
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# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 51

**[Document Number AMS–SC–18–0081, SC–19–329]**

### Removal of U.S. Grade Standards

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that removed seven voluntary U.S. grade standards and one consumer standard for fresh fruits and vegetables from the Code of Federal Regulations (CFR). The removal will save the Agricultural Marketing Service (AMS) resources as the cost of printing the eight standards annually exceeds the benefits of their further inclusion in the CFR.

**DATES:** Effective July 16, 2019.

**FOR FURTHER INFORMATION CONTACT:** Lindsay H. Mitchell, Standardization Specialist, USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; phone (540) 361–1120; fax (540) 361–1199; or email *Lindsay.Mitchell@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule [1] that was published in the **Federal Register** and became effective on February 1, 2019 (84 FR 959–961, Document Number AMS–SC–18–0081), AMS removed the following eight standards from 7 CFR part 51: U.S. Standards for Grades of Cantaloups, U.S. Standards for Celery, U.S. Consumer Standards for Celery Stalks, U.S. Standards for Persian (Tahiti) Limes, U.S. Standards for Grades of Peaches, U.S. Standards for Grades of Apricots, U.S. Standards for Grades of Nectarines, and U.S. Standards for Grades of Honey Dew and Honey Ball Type Melons. None of the eight voluntary standards removed from the CFR are related to a current active marketing order, import regulation, or export act. This action will save the cost of printing the eight standards in the CFR annually.

No comments were received on the interim rule by the April 2, 2019 due date, so AMS is adopting the interim rule as a final rule, without change, for the reasons given in the interim rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866 and the Regulatory Flexibility Act, Executive Orders 13563, 13175, and 12988.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866. Because review of this rule is waived, this action does not trigger the requirements of Executive Order 13771.

#### List of Subjects in 7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

### PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

■ Accordingly, the interim rule that amended 7 CFR part 51 that was published at 84 FR 959 on February 1, 2019, is adopted as final without change.

Dated: July 11, 2019.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2019–15060 Filed 7–15–19; 8:45 am]

**BILLING CODE 3410–02–P**

[1] To view the interim rule, go to *https://www.regulations.gov/document?D=AMS-SC-18-0081-0001.*

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 932

**[Doc. No. AMS–SC–18–0105; SC19–932–1 FR]**

### Olives Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the California Olive Committee (Committee) to increase the assessment rate for California olives handled under Marketing Order No. 932. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective August 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** Kathie Notoro, Marketing Specialist or Terry Vawter, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 538–1672, Fax: (559) 487–5906, or Email: *Kathie.Notoro@usda.gov* or *Terry.Vawter@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the marketing order and is comprised of producers and handlers of olives operating within the area of production.

The Department of Agriculture (USDA) is issuing this final rule in

conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the marketing order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable olives beginning on January 1, 2019, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

This rule increases the assessment rate from $24.00 to $44.00 per ton of assessed olives for the 2019 and subsequent fiscal years. The higher rate is a result of a significantly reduced crop size, a late season freeze, and the need to cover Committee expenses.

The Committee met on December 11, 2018, and unanimously recommended 2019 expenditures of $1,628,923, and an assessment rate of $44.00 per ton of assessed olives. In comparison, last year's budgeted expenditures were $1,749,477. The assessment rate of $44.00 is $20.00 higher than the rate currently in effect. Producer receipts show a yield of 17,953 tons of assessable olives from the 2018 crop year. This is substantially less than the 2017 crop year, which yielded 90,188 tons of assessable olives. The 2019 fiscal year assessment rate increase is necessary to ensure the Committee has enough revenue to fund the recommended 2019 budgeted expenditures while ensuring the funds in the financial reserve would be kept within the maximum permitted by the marketing order.

The marketing order has a fiscal year and a crop year that are independent of each other. The crop year is a 12-month period that begins on August 1 of each year and ends on July 31 of the following year. The fiscal year is the 12-month period that begins on January 1 and ends on December 31. Olives are an alternate-bearing crop, with a small crop followed by a large crop. For this assessment rate rule, the 2018 crop year receipts were used to determine the assessment rate for the 2019 fiscal year.

The major expenditures recommended by the Committee for the 2019 fiscal year includes $713,900 for program administration, $513,500 for marketing activities, $343,523 for research, and $58,000 for inspection equipment. Budgeted expenses for these items during the 2018 fiscal year were $401,200 for program administration, $973,500 for marketing activities, $297,777 for research, and $77,000 inspection equipment.

The assessment rate recommended by the Committee were based on the anticipated fiscal year expenses, olive tonnage received by handlers during the 2018 crop year, and the amount of funds in the Committee's financial reserve. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the marketing order of approximately one fiscal year's expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information. The Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee or USDA. The meetings are open to the public and interested persons may express their views at these meetings. Further rulemaking would be undertaken as necessary.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,100 producers of olives in the production area and two handlers subject to regulation under the marketing order. The Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), data as of June 2018, the average price to producers for the 2017 crop year was $974.00 per ton, and total assessable volume for the 2018 crop year was 17,953 tons. Based on production, the total number of California olive producers, and price paid to those producers, the average annual producer revenue is less than $750,000 ($974.00 times 17,953 tons equals $17,486,222 divided by 1,100 producers equals an average annual producer revenue of $15,896.57). Therefore, most olive producers may be classified as small entities. Both handlers may be classified as large entities under the SBA's definitions because their annual receipts are greater than $7,500,000.

This rule increases the assessment rate collected from handlers for the 2019 and subsequent fiscal years from $24.00

to $44.00 per ton of assessable olives. The Committee unanimously recommended 2019 expenditures of $1,628,923 and an assessment rate of $44.00 per ton of assessable olives. The recommended assessment rate of $44.00 is $20.00 higher than the 2018 rate. The quantity of assessable olives for the 2019 Fiscal year is 17,953 tons. The $44.00 rate should provide $789,932 in assessment revenue. The higher assessment rate is needed because annual receipts for the 2018 crop year are 17,953 tons compared to 90,188 tons for the 2017 crop year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. Income derived from the $44.00 per ton assessment rate, along with funds from the authorized reserve and interest income, should be adequate to meet this fiscal year's expenses.

The major expenditures recommended by the Committee for the 2019 fiscal year include $713,900 for program administration, $513,500 for marketing activities, $343,523 for research, and $58,000 for inspection equipment. Budgeted expenses for these items during the 2018 fiscal year were $401,200 for program administration, $973,500 for marketing activities, $297,777 for research, and $77,000 for inspection equipment. The Committee deliberated on many of the expenses, weighed the relative value of various programs or projects, and increased their expenses for marketing and research activities.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources including the Committee's executive, marketing, inspection, and research subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry. The assessment rate of $44.00 per ton of assessable olives was derived by considering anticipated expenses, the low volume of assessable olives, and a late season freeze.

A review of NASS information indicates that the average producer price for the 2017 crop year was $974.00 per ton. Therefore, utilizing the assessment rate of $44.00 per ton, the assessment revenue for the 2019 fiscal year as a percentage of total producer revenue would be approximately 4.52 percent.

This action increases the assessment obligation imposed on handlers which are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's December 11, 2018 meeting was widely publicized throughout the production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the marketing order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements because of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on April 24, 2019 (84 FR 17089). Copies of the proposed rule were provided to all California olive handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 24, 2019, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

**List of Subjects in 7 CFR Part 932**

Olives, Marketing agreements, Reporting and recordkeeping requirements.

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

## PART 932—OLIVES GROWN IN CALIFORNIA

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

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

**§ 932.230 Assessment rate.**

On and after January 1, 2019, an assessment rate of $44.00 per ton is established for California olives.

Dated: July 11, 2019.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2019–15061 Filed 7–15–19; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 208

**RIN 1615–AC44**

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

### 8 CFR Parts 1003 and 1208

**[EOIR Docket No. 19–0504; A.G. Order No. 4488–2019]**

**RIN 1125–AA91**

## Asylum Eligibility and Procedural Modifications

**AGENCY:** Executive Office for Immigration Review, Department of Justice; U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Interim final rule; request for comment.

**SUMMARY:** The Department of Justice and the Department of Homeland Security (''DOJ,'' ''DHS,'' or collectively, ''the Departments'') are adopting an interim final rule (''interim rule'' or ''rule'') governing asylum claims in the context of aliens who enter or attempt to enter the United States across the southern land border after failing to apply for protection from persecution or torture while in a third country through which

they transited en route to the United States. Pursuant to statutory authority, the Departments are amending their respective regulations to provide that, with limited exceptions, an alien who enters or attempts to enter the United States across the southern border after failing to apply for protection in a third country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States is ineligible for asylum. This basis for asylum ineligibility applies only prospectively to aliens who enter or arrive in the United States on or after the effective date of this rule. In addition to establishing a new mandatory bar for asylum eligibility for aliens who enter or attempt to enter the United States across the southern border after failing to apply for protection from persecution or torture in at least one third country through which they transited en route to the United States, this rule would also require asylum officers and immigration judges to apply this new bar on asylum eligibility when administering the credible-fear screening process applicable to stowaways and aliens who are subject to expedited removal under section 235(b)(1) of the Immigration and Nationality Act. The new bar established by this regulation does not modify withholding or deferral of removal proceedings. Aliens who fail to apply for protection in a third country of transit may continue to apply for withholding of removal under the Immigration and Nationality Act (''INA'') and deferral of removal under regulations issued pursuant to the legislation implementing U.S. obligations under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**DATES:**

*Effective date:* This rule is effective July 16, 2019.

*Submission of public comments:* Written or electronic comments must be submitted on or before August 15, 2019. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System will accept comments prior to midnight eastern standard time at the end of that day.

**ADDRESSES:** You may submit comments, identified by EOIR Docket No. 19–0504, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 19–0504 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. Contact Telephone Number (703) 305–0289 (not a toll-free call).

**FOR FURTHER INFORMATION CONTACT:** Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2616, Falls Church, VA 22041. Contact Telephone Number (703) 305–0289 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. The Departments also invite comments that relate to the potential economic or federalism effects that might result from this rule. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommended change; and include data, information, or authority that supports the recommended change. Comments received will be considered and addressed in the process of drafting the final rule.

All comments submitted for this rulemaking should include the agency name and EOIR Docket No. 19–0504. Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifiable information (such as a person's name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits.

If you want to submit personally identifiable information as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFIABLE INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the information of which you seek redaction.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment and precisely and prominently identify the confidential business information of which you seek redaction. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.* Personally identifiable information and confidential business information provided as set forth above will be placed in the public docket file of DOJ's Executive Office for Immigration Review (''EOIR''), but not posted online. To inspect the public docket file in person, you must make an appointment with EOIR. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for the contact information specific to this rule.

## II. Purpose of This Interim Rule

As discussed further below, asylum is a discretionary immigration benefit that generally can be sought by eligible aliens who are physically present or arriving in the United States, irrespective of their status, as provided in section 208 of the INA, 8 U.S.C. 1158. Congress, however, has provided that certain categories of aliens cannot receive asylum and has further delegated to the Attorney General and the Secretary of Homeland Security (''Secretary'') the authority to promulgate regulations establishing additional bars on eligibility to the extent consistent with the asylum statute, as well as the authority to establish ''any other conditions or limitations on the consideration of an application for asylum'' that are consistent with the INA. *See* INA 208(b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(2)(C), (d)(5)(B). This interim rule will limit aliens' eligibility for this discretionary benefit if they enter or attempt to enter the United States across the southern land border after failing to apply for protection in at least one third country through which they transited en route to the United States, subject to limited exceptions.

The United States has experienced a dramatic increase in the number of aliens encountered along or near the southern land border with Mexico. This increase corresponds with a sharp increase in the number, and percentage, of aliens claiming fear of persecution or torture when apprehended or encountered by DHS. For example, over the past decade, the overall percentage of aliens subject to expedited removal and referred, as part of the initial screening process, for a credible-fear interview on claims of a fear of return has jumped from approximately 5

percent to above 40 percent. The number of cases referred to DOJ for proceedings before an immigration judge has also risen sharply, more than tripling between 2013 and 2018. These numbers are projected to continue to increase throughout the remainder of Fiscal Year (''FY'') 2019 and beyond. Only a small minority of these individuals, however, are ultimately granted asylum.

The large number of meritless asylum claims places an extraordinary strain on the nation's immigration system, undermines many of the humanitarian purposes of asylum, has exacerbated the humanitarian crisis of human smuggling, and affects the United States' ongoing diplomatic negotiations with foreign countries. This rule mitigates the strain on the country's immigration system by more efficiently identifying aliens who are misusing the asylum system to enter and remain in the United States rather than legitimately seeking urgent protection from persecution or torture. Aliens who transited through another country where protection was available, and yet did not seek protection, may fall within that category.

Apprehending the great number of aliens crossing illegally into the United States and processing their credible-fear and asylum claims consumes an inordinate amount of resources of the Departments. DHS must surveil, apprehend, screen, and process the aliens who enter the country. DHS must also devote significant resources to detain many aliens pending further proceedings and to represent the United States in immigration court proceedings. The large influx of aliens also consumes substantial resources of DOJ, whose immigration judges adjudicate aliens' claims and whose officials are responsible for prosecuting and maintaining custody over those who violate Federal criminal law. Despite DOJ deploying close to double the number of immigration judges as in 2010 and completing historic numbers of cases, currently more than 900,000 cases are pending before the immigration courts. This represents an increase of more than 100,000 cases (or a greater than 13 percent increase in the number of pending cases) since the start of FY 2019. And this increase is on top of an already sizeable jump over the previous five years in the number of cases pending before immigration judges. From the end of FY 2013 to the close of FY 2018, the number of pending cases more than doubled, increasing nearly 125 percent.

That increase is owing, in part, to the continued influx of aliens and record numbers of asylum applications being filed: More than 436,000 of the currently pending immigration cases include an asylum application. But a large majority of the asylum claims raised by those apprehended at the southern border are ultimately determined to be without merit. The strain on the immigration system from those meritless cases has been extreme and extends to the judicial system. The INA provides many asylum-seekers with rights of appeal to the Article III courts of the United States. Final disposition of asylum claims, even those that lack merit, can take years and significant government resources to resolve, particularly where Federal courts of appeals grant stays of removal when appeals are filed. *See De Leon* v. *INS,* 115 F.3d 643 (9th Cir. 1997).

The rule's bar on asylum eligibility for aliens who fail to apply for protection in at least one third country through which they transit en route to the United States also aims to further the humanitarian purposes of asylum. It prioritizes individuals who are unable to obtain protection from persecution elsewhere and individuals who are victims of a ''severe form of trafficking in persons'' as defined by 8 CFR 214.11, many of whom do not volitionally transit through a third country to reach the United States. By deterring meritless asylum claims and de-prioritizing the applications of individuals who could have obtained protection in another country, the Departments seek to ensure that those refugees who have no alternative to U.S.-based asylum relief or have been subjected to an extreme form of human trafficking are able to obtain relief more quickly.

Additionally, the rule seeks to curtail the humanitarian crisis created by human smugglers bringing men, women, and children across the southern border. By reducing the incentive for aliens without an urgent or genuine need for asylum to cross the border—in the hope of a lengthy asylum process that will enable them to remain in the United States for years, typically free from detention and with work authorization, despite their statutory ineligibility for relief—the rule aims to reduce human smuggling and its tragic effects.

Finally, the rule aims to aid the United States in its negotiations with foreign nations on migration issues. Addressing the eligibility for asylum of aliens who enter or attempt to enter the United States after failing to seek protection in at least one third country through which they transited en route to the United States will better position the United States as it engages in ongoing diplomatic negotiations with Mexico and the Northern Triangle countries (Guatemala, El Salvador, and Honduras) regarding migration issues in general, related measures employed to control the flow of aliens into the United States (such as the recently implemented Migrant Protection Protocols [1]), and the urgent need to address the humanitarian and security crisis along the southern land border between the United States and Mexico.

In sum, this rule provides that, with limited exceptions, an alien who enters or arrives in the United States across the southern land border is ineligible for the discretionary benefit of asylum unless he or she applied for and received a final judgment denying protection in at least one third country through which he or she transited en route to the United States. The alien would, however, remain eligible to apply for statutory withholding of removal and for deferral of removal under the CAT.

In order to alleviate the strain on the U.S. immigration system and more effectively provide relief to those most in need of asylum—victims of a severe form of trafficking and refugees who have no other option—this rule incorporates the eligibility bar on asylum into the credible-fear screening process applicable to stowaways and aliens placed in expedited removal proceedings.

## III. Background

### *A. Joint Interim Rule*

The Attorney General and the Secretary publish this joint interim rule pursuant to their respective authorities concerning asylum determinations.

The Homeland Security Act of 2002 (''HSA''), Public Law 107–296, as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. The HSA charged the Secretary ''with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,'' 8 U.S.C. 1103(a)(1), and granted the Secretary the power to take all actions ''necessary for carrying out'' the provisions of the INA, *id.* at 1103(a)(3). The HSA also transferred to DHS some responsibility for affirmative asylum applications, *i.e.,* applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). That authority has been delegated within DHS to U.S. Citizenship and Immigration Services (''USCIS''). USCIS asylum officers

[1] *See* Notice of Availability for Policy Guidance Related to Implementation of the Migrant Protection Protocols, 84 FR 6811 (Feb. 28, 2019).

determine in the first instance whether an alien's affirmative asylum application should be granted. *See* 8 CFR 208.4(b), 208.9.

But the HSA retained authority over certain individual immigration adjudications (including those related to defensive asylum applications) for DOJ, under EOIR and subject to the direction and regulation of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g). Thus, immigration judges within DOJ continue to adjudicate all asylum applications made by aliens during the removal process (defensive asylum applications), and they also review affirmative asylum applications referred by USCIS to the immigration court. *See* INA 101(b)(4), 8 U.S.C. 1101(b)(4); 8 CFR 1208.2; *Dhakal* v. *Sessions,* 895 F.3d 532, 536–37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals (Board), also within DOJ, hears appeals from certain decisions by immigration judges. 8 CFR 1003.1(b)–(d). Asylum-seekers may appeal certain Board decisions to the Article III courts of the United States. *See* INA 242(a), 8 U.S.C. 1252(a).

The HSA also provided ''[t]hat determination and ruling by the Attorney General with respect to all questions of law shall be controlling.'' INA 103(a)(1), 8 U.S.C. 1103(a)(1). This broad division of functions and authorities informs the background of this interim rule.

*B. Legal Framework for Asylum*

Asylum is a form of discretionary relief under section 208 of the INA, 8 U.S.C. 1158, that generally, if granted, keeps an alien from being subject to removal, creates a path to lawful permanent resident status and U.S. citizenship, and affords a variety of other benefits, such as allowing certain alien family members to obtain lawful immigration status derivatively. *See R–S–C* v. *Sessions,* 869 F.3d 1176, 1180 (10th Cir. 2017); *see also, e.g.,* INA 208(c)(1)(A), (C), 8 U.S.C. 1158(c)(1)(A), (C) (asylees cannot be removed subject to certain exceptions and can travel abroad with prior consent); INA 208(c)(1)(B), (d)(2), 8 U.S.C. 1158(c)(1)(B), (d)(2) (asylees shall be given work authorization; asylum applicants may be granted work authorization 180 days after the filing of their applications); INA 208(b)(3), 8 U.S.C. 1158(b)(3) (allowing derivative asylum for an asylee's spouse and unmarried children); INA 209(b), 8 U.S.C. 1159(b) (allowing the Attorney General or Secretary to adjust the status of an asylee to that of a lawful permanent resident); 8 CFR 209.2; 8 U.S.C. 1612(a)(2)(A) (asylees are eligible for certain Federal means-tested benefits on a preferential basis compared to most legal permanent residents); INA 316(a), 8 U.S.C. 1427(a) (describing requirements for the naturalization of lawful permanent residents).

Aliens applying for asylum must establish that they meet the definition of a ''refugee,'' that they are not subject to a bar to the granting of asylum, and that they merit a favorable exercise of discretion. INA 208(b)(1), 240(c)(4)(A), 8 U.S.C. 1158(b)(1), 8 U.S.C. 1229a(c)(4)(A); *see Moncrieffe* v. *Holder,* 569 U.S. 184, 187 (2013) (describing asylum as a form of ''discretionary relief from removal''); *Delgado* v. *Mukasey,* 508 F.3d 702, 705 (2d Cir. 2007) (''Asylum is a discretionary form of relief . . . . Once an applicant has established eligibility . . . it remains within the Attorney General's discretion to deny asylum.''). Because asylum is a discretionary form of relief from removal, the alien bears the burden of showing both eligibility for asylum and why the Attorney General or Secretary should exercise the discretion to grant relief. *See* INA 208(b)(1), 240(c)(4)(A), 8 U.S.C. 1158(b)(1), 1229a(c)(4)(A)(ii); 8 CFR 1240.8(d); *see Romilus* v. *Ashcroft,* 385 F.3d 1, 8 (1st Cir. 2004).

Section 208 of the INA provides that, in order to apply for asylum, an applicant must be ''physically present'' or ''arriving'' in the United States, INA 208(a)(1), 8 U.S.C. 1158(a)(1). Furthermore, to obtain asylum, the alien must demonstrate that he or she meets the statutory definition of a ''refugee,'' INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A), and is not subject to an exception or bar, INA 208(b)(2), 8 U.S.C. 1158(b)(2); 8 CFR 1240.8(d). The alien bears the burden of proof to establish that he or she meets these criteria. INA 208(b)(1)(B)(i), 8 U.S.C. 1158(b)(1)(B)(i); 8 CFR 1240.8(d).

For an alien to establish that he or she is a ''refugee,'' the alien generally must be someone who is outside of his or her country of nationality and ''is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A). In addition, if evidence indicates that one or more of the grounds for mandatory denial may apply, *see* INA 208(b)(2)(A)(i)–(vi), 8 U.S.C. 1158(b)(2)(A)(i)–(vi), an alien must show not only that he or she does not fit within one of the statutory bars to granting asylum but also that he or she is not subject to any ''additional limitations and conditions . . . under which an alien shall be ineligible for asylum'' established by a regulation that is ''consistent with'' section 208 of the INA, *see* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). The asylum applicant bears the burden of establishing that the bar at issue does not apply. 8 CFR 1240.8(d); *see also, e.g., Rendon* v. *Mukasey,* 520 F.3d 967, 973 (9th Cir. 2008) (applying 8 CFR 1240.8(d) in the context of the aggravated felony bar to asylum); *Chen* v. *U.S. Att'y Gen.,* 513 F.3d 1255, 1257 (11th Cir. 2008) (applying 8 CFR 1240.8(d) in the context of the persecutor bar); *Gao* v. *U.S. Att'y Gen.,* 500 F.3d 93, 98 (2d Cir. 2007) (same).

Because asylum is a discretionary benefit, those aliens who are statutorily eligible for asylum (*i.e.,* those who meet the definition of ''refugee'' and are not subject to a mandatory bar) are not entitled to it. After demonstrating eligibility, aliens must further meet their burden of showing that the Attorney General or Secretary should exercise his or her discretion to grant asylum. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A) (the ''Secretary of Homeland Security or the Attorney General may grant asylum to an alien'' who applies in accordance with the required procedures and meets the definition of a ''refugee''). The asylum statute's grant of discretion ''[i]s a broad delegation of power, which restricts the Attorney General's discretion to grant asylum only by requiring the Attorney General to first determine that the asylum applicant is a 'refugee.' '' *Komarenko* v. *INS,* 35 F.3d 432, 436 (9th Cir. 1994), *overruled on other grounds by Abebe* v. *Mukasey,* 554 F.3d 1203 (9th Cir. 2009) (en banc) (per curiam). Immigration judges and asylum officers exercise that delegated discretion on a case-by-case basis.

*C. Establishing Bars to Asylum*

The availability of asylum has long been qualified both by statutory bars and by administrative discretion to create additional bars. Those bars have developed over time in a back-and-forth process between Congress and the Attorney General. The original asylum statute, as set out in the Refugee Act of 1980, Public Law 96–212, simply directed the Attorney General to ''establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee'' within the meaning of the INA. *See* 8 U.S.C. 1158(a) (1982); *see also INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 427–

29 (1987) (describing the 1980 provisions).

In the 1980 implementing regulations, the Attorney General, in his discretion, established several mandatory bars to granting asylum that were modeled on the mandatory bars to eligibility for withholding of deportation under the then-existing section 243(h) of the INA. *See* Refugee and Asylum Procedures, 45 FR 37392, 37392 (June 2, 1980). Those regulations required denial of an asylum application if it was determined that (1) the alien was ''not a refugee within the meaning of section 101(a)(42)'' of the INA, 8 U.S.C. 1101(a)(42); (2) the alien had been ''firmly resettled in a foreign country'' before arriving in the United States; (3) the alien ''ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion''; (4) the alien had ''been convicted by a final judgment of a particularly serious crime'' and therefore constituted ''a danger to the community of the United States''; (5) there were ''serious reasons for considering that the alien ha[d] committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States''; or (6) there were ''reasonable grounds for regarding the alien as a danger to the security of the United States.'' *See* 45 FR at 37394–95.

In 1990, the Attorney General substantially amended the asylum regulations while retaining the mandatory bars for aliens who (1) persecuted others on account of a protected ground; (2) were convicted of a particularly serious crime in the United States; (3) firmly resettled in another country; or (4) presented reasonable grounds to be regarded as a danger to the security of the United States. *See* Asylum and Withholding of Deportation Procedures, 55 FR 30674, 30683 (July 27, 1990); *see also Yang* v. *INS,* 79 F.3d 932, 936–39 (9th Cir. 1996) (upholding firm-resettlement bar); *Komarenko,* 35 F.3d at 436 (upholding particularly-serious-crime bar), *abrogated on other grounds, Abebe* v. *Mukasey,* 554 F.3d 1203 (9th Cir. 2009) (en banc). In the Immigration Act of 1990, Congress added an additional mandatory bar to applying for or being granted asylum for ''an[y] alien who has been convicted of an aggravated felony.'' Public Law 101–649, sec. 515 (1990).

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Public Law 104–208, div. C, and the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, Congress amended section 208 of the INA, 8 U.S.C. 1158, to include the asylum provisions in effect today: Among other things, Congress designated three categories of aliens who, with limited exceptions, are ineligible to apply for asylum: (1) Aliens who can be removed to a safe third country pursuant to a bilateral or multilateral agreement; (2) aliens who failed to apply for asylum within one year of arriving in the United States; and (3) aliens who have previously applied for asylum and had the application denied. Public Law 104–208, div. C, sec. 604(a); *see* INA 208(a)(2)(A)–(C), 8 U.S.C. 1158(a)(2)(A)–(C). Congress also adopted six mandatory bars to granting asylum, which largely tracked the pre-existing asylum regulations. These bars prohibited asylum for (1) aliens who ''ordered, incited, or otherwise participated'' in the persecution of others on account of a protected ground; (2) aliens convicted of a ''particularly serious crime'' in the United States; (3) aliens who committed a ''serious nonpolitical crime outside the United States'' before arriving in the United States; (4) aliens who are a ''danger to the security of the United States''; (5) aliens who are inadmissible or removable under a set of specified grounds relating to terrorist activity; and (6) aliens who have ''firmly resettled in another country prior to arriving in the United States.'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(A)(i)–(vi), 8 U.S.C. 1158(b)(2)(A)(i)–(vi). Congress further added that aggravated felonies, defined in 8 U.S.C. 1101(a)(43), would be considered ''particularly serious crime[s].'' Public Law 104–208, div. C, sec. 604(a); *see* INA 201(a)(43), 8 U.S.C. 1101(a)(43).

Although Congress enacted specific bars to asylum eligibility, that statutory list is not exhaustive. Congress, in IIRIRA, expressly authorized the Attorney General to expand upon two of those exceptions—the bars for ''particularly serious crimes'' and ''serious nonpolitical offenses.'' While Congress prescribed that all aggravated felonies constitute particularly serious crimes, Congress further provided that the Attorney General may ''designate by regulation offenses that will be considered'' a ''particularly serious crime,'' the perpetrator of which ''constitutes a danger to the community of the United States.'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(A)(ii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(ii), (B)(ii). Courts and the Board have long held that this grant of authority also authorizes the Board to identify additional particularly serious crimes (beyond aggravated felonies) through case-by-case adjudication. *See, e.g., Delgado* v. *Holder,* 648 F.3d 1095, 1106 (9th Cir. 2011) (en banc) (finding that Congress's decisions over time to amend the particularly serious crime bar by statute did not call into question the Board's additional authority to name serious crimes via case-by-case adjudication); *Ali* v. *Achim,* 468 F.3d 462, 468–69 (7th Cir. 2006) (relying on the absence of an explicit statutory mandate that the Attorney General designate ''particular serious crimes'' *only* via regulation). Congress likewise authorized the Attorney General to designate by regulation offenses that constitute ''a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States.'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(A)(iii), (B)(ii), 8 U.S.C. 1158(b)(2)(A)(iii), (B)(ii).[2]

Congress further provided the Attorney General with the authority, by regulation, to ''establish additional limitations and conditions, consistent with [section 208 of the INA], under which an alien shall be ineligible for asylum under paragraph (1).'' Public Law 104–208, div. C, sec. 604(a); *see* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). As the Tenth Circuit has recognized, ''the statute clearly empowers'' the Attorney General and the Secretary to ''adopt[ ] further limitations'' on asylum eligibility. *R–S–C,* 869 F.3d at 1187 & n.9. By allowing the creation by regulation of ''additional limitations and conditions,'' the statute gives the Attorney General and the Secretary broad authority in determining what the ''limitations and conditions'' should be. The additional limitations on eligibility must be established ''by regulation,'' and must be ''consistent with'' the rest of section 208 of the INA. INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C).

Thus, the Attorney General has previously invoked section 208(b)(2)(C) of the INA to limit eligibility for asylum based on a ''fundamental change in circumstances'' and on the ability of an applicant to safely relocate internally within the alien's country of nationality or of last habitual residence. *See* Asylum Procedures, 65 FR 76121, 76126 (Dec. 6, 2000). More recently, the Attorney General and Secretary invoked section 208(b)(2)(C) to limit eligibility for asylum for aliens subject to a bar on entry under certain presidential proclamations. *See* Aliens Subject to a Bar on Entry Under Certain Presidential

[2] These provisions continue to refer only to the Attorney General, but the Departments interpret the provisions to also apply to the Secretary by operation of the HSA, Public Law 107–296. *See* 6 U.S.C. 552; 8 U.S.C. 1103(a)(1).

Proclamations; Procedures for Protection Claims, 83 FR 55934 (Nov. 9, 2018).[3] The courts have also viewed section 208(b)(2)(C) as conferring broad discretion, including to render aliens ineligible for asylum based on fraud. *See R–S–C,* 869 F.3d at 1187; *Nijjar* v. *Holder,* 689 F.3d 1077, 1082 (9th Cir. 2012) (noting that fraud can be ''one of the 'additional limitations . . . under which an alien shall be ineligible for asylum' that the Attorney General is authorized to establish by regulation'').

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), also establishes certain procedures for consideration of asylum applications. But Congress specified that the Attorney General ''may provide by regulation for any other conditions or limitations on the consideration of an application for asylum,'' so long as those limitations are ''not inconsistent with this chapter.'' INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B).

In sum, the current statutory framework leaves the Attorney General (and, after the HSA, also the Secretary) significant discretion to adopt additional bars to asylum eligibility. As noted above, when creating mandatory bars to asylum eligibility in the IIRIRA, Congress simultaneously delegated the authority to create additional bars in section 1158(b)(2)(C). Public Law 104–208, sec. 604 (codified at 8 U.S.C. 1158(b)(2)). Pursuant to this broad delegation of authority, the Attorney General and the Secretary have in the past acted to protect the integrity of the asylum system by limiting eligibility for those who do not truly require this country's protection, and do so again here. *See, e.g.,* 83 FR at 55944; 65 FR at 76126.

In promulgating this rule, the Departments rely on the broad authority granted by 8 U.S.C. 1158(b)(2)(C) to protect the ''core regulatory purpose'' of asylum law by prioritizing applicants ''with nowhere else to turn.'' *Matter of B–R–,* 26 I&N Dec. 119, 122 (BIA 2013) (internal quotation marks omitted) (explaining that, in light of asylum law's ''core regulatory purpose,'' several provisions of the U.S. Code ''limit an alien's ability to claim asylum in the United States when other safe options are available''). Such prioritization is consistent with the purpose of the statutory firm-resettlement bar (8 U.S.C. 1158(b)(2)(A)(vi)), which likewise was implemented to limit the availability of asylum for those who are seeking to choose among a number of safe countries. *See Sall* v. *Gonzales,* 437 F.3d 229, 233 (2d Cir. 2006); *Matter of A–G–G–,* 25 I&N Dec. 486, 503 (BIA 2011); *see also* 8 U.S.C. 1158(a)(2)(A) (providing that aliens who may be removed, pursuant to a bilateral or multilateral agreement, to a safe third country may not apply for asylum, and further demonstrating the intention of Congress to afford asylum protection only to those applicants who cannot seek effective protection in third countries). The concern with avoiding such forum-shopping has only been heightened by the dramatic increase in aliens entering or arriving in the United States along the southern border after transiting through one or more third countries where they could have sought protection, but did not. *See infra* at 33–41; *Kalubi* v. *Ashcroft,* 364 F.3d 1134, 1140 (9th Cir. 2004) (noting that forum-shopping might be ''part of the totality of circumstances that sheds light on a request for asylum in this country''). While under the current regulatory regime the firm-resettlement bar applies only in circumstances in which offers of permanent status have been extended by third countries, *see* 8 CFR 208.15, 1208.15, the additional bar created by this rule also seeks—like the firm-resettlement bar—to deny asylum protection to those persons effectively choosing among several countries where avenues to protection from return to persecution are available by waiting until they reach the United States to apply for protection. *See Sall,* 437 F.3d at 233. Thus, the rule is well within the authority conferred by section 208(b)(2)(C).

*D. Other Forms of Protection*

Aliens who are not eligible to apply for or receive a grant of asylum, or who are denied asylum on the basis of the Attorney General's or the Secretary's discretion, may nonetheless qualify for protection from removal under other provisions of the immigration laws. A defensive application for asylum that is submitted by an alien in removal proceedings is deemed an application for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* 8 CFR 208.30(e)(2)–(4); 8 CFR 1208.16(a). And an immigration judge may also consider an alien's eligibility for withholding and deferral of removal under regulations issued pursuant to the implementing legislation regarding U.S. obligations under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT''). *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, sec. 2242(b) (1998); 8 CFR 1208.13(c); 8 CFR 1208.3(b), *see also* 8 CFR 1208.16(c) and 1208.17.

Those forms of protection bar an alien's removal to any country where the alien would ''more likely than not'' face persecution or torture, meaning that the alien would face a clear probability that his or her life or freedom would be threatened on account of a protected ground or a clear probability of torture. 8 CFR 1208.16(b)(2), (c)(2); *see Kouljinski* v. *Keisler,* 505 F.3d 534, 544 (6th Cir. 2007); *Sulaiman* v. *Gonzales,* 429 F.3d 347, 351 (1st Cir. 2005). Thus, if an alien proves that it is more likely than not that the alien's life or freedom would be threatened on account of a protected ground, but is denied asylum for some other reason—for instance, because of a statutory exception, an eligibility bar adopted by regulation, or a discretionary denial of asylum—the alien nonetheless may be entitled to statutory withholding of removal if not otherwise barred from that form of protection. INA 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A); 8 CFR 208.16, 1208.16; *see also Garcia* v. *Sessions,* 856 F.3d 27, 40 (1st Cir. 2017) (''[W]ithholding of removal has long been understood to be a mandatory protection that must be given to certain qualifying aliens, while asylum has never been so understood.''). Likewise, an alien who establishes that he or she will more likely than not face torture in the country of removal will qualify for CAT protection. *See* 8 CFR 208.16(c), 208.17(a), 1208.16(c), 1208.17(a). In contrast to the more generous benefits available through asylum, statutory withholding and CAT protection do not: (1) Prohibit the Government from removing the alien to a third country where the alien would not face the requisite probability of persecution or torture (even in the absence of an agreement with that third country); (2) create a path to lawful permanent resident status and citizenship; or (3) afford the same ancillary benefits (such as derivative protection for family members) and access to Federal means-tested public benefits. *See R–S–C,* 869 F.3d at 1180.

*E. Implementation of International Treaty Obligations*

The framework described above is consistent with certain U.S. obligations under the 1967 Protocol relating to the Status of Refugees (''Refugee Protocol''), which incorporates Articles 2–34 of the 1951 Convention relating to the Status of Refugees (''Refugee Convention''), as well as U.S. obligations under Article 3 of the CAT. Neither the Refugee Protocol nor the CAT is self-executing in the United States. *See Khan* v.

[3] This rule is currently subject to a preliminary injunction against its enforcement. *See East Bay Sanctuary Covenant* v. *Trump,* 354 F. Supp. 3d 1094, 1115, 1121 (N.D. Cal. 2018), *on remand from* 909 F.3d 1219 (9th Cir. 2018).

*Holder,* 584 F.3d 773, 783 (9th Cir. 2009) (''[T]he [Refugee] Protocol is not self-executing.''); *Auguste* v. *Ridge,* 395 F.3d 123, 132 (3d Cir. 2005) (the CAT ''was not self-executing''). These treaties are not directly enforceable in U.S. law, but some of their obligations have been implemented by domestic legislation. For example, the United States has implemented the non-refoulement provisions of these treaties—*i.e.,* provisions prohibiting the return of an individual to a country where he or she would face persecution or torture—through the withholding of removal provisions at section 241(b)(3) of the INA and the CAT regulations, rather than through the asylum provisions at section 208 of the INA. *See Cardoza-Fonseca,* 480 U.S. at 440–41; Foreign Affairs Reform and Restructuring Act of 1998 at sec. 2242(b); 8 CFR 208.16(b)–(c), 208.17–208.18; 1208.16(b)–(c), 1208.17–1208.18. Limitations on the availability of asylum that do not affect the statutory withholding of removal or protection under the CAT regulations are consistent with these provisions. *See R–S–C,* 869 F.3d at 1188 & n. 11; *Cazun* v. *U.S. Att'y Gen.,* 856 F.3d 249, 257 & n.16 (3d Cir. 2017); *Ramirez-Mejia* v. *Lynch,* 813 F.3d 240, 241 (5th Cir. 2016).

Courts have rejected arguments that the Refugee Convention, as implemented, requires that every qualified refugee receive asylum. For example, the Supreme Court has made clear that Article 34, which concerns the assimilation and naturalization of refugees, is precatory and not mandatory, and, accordingly, does not mandate that all refugees be granted asylum. *See Cardoza-Fonseca,* 480 U.S. at 441. Section 208 of the INA reflects that Article 34 is precatory and not mandatory, and accordingly does not provide that all refugees shall receive asylum. *See id.; see also R–S–C,* 869 F.3d at 1188; *Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017); *Cazun,* 856 F.3d at 257 & n. 16; *Garcia,* 856 F.3d at 42; *Ramirez-Mejia,* 813 F.3d at 241. As noted above, Congress has also recognized the precatory nature of Article 34 by imposing various statutory exceptions and by authorizing the creation of new bars to asylum eligibility through regulation.

Courts have likewise rejected arguments that other provisions of the Refugee Convention require every refugee to receive asylum. For example, courts have held, in the context of upholding the bar on eligibility for asylum in reinstatement proceedings under section 241(a)(5) of the INA, 8 U.S.C. 1231(a)(5), that limiting the ability to apply for asylum does not constitute a prohibited ''penalty'' under Article 31(1) of the Refugee Convention. *Mejia,* 866 F.3d at 588; *Cazun,* 856 F.3d at 257 & n.16. Courts have also rejected the argument that Article 28 of the Refugee Convention, governing the issuance of international travel documents for refugees ''lawfully staying'' in a country's territory, mandates that every person who might qualify for statutory withholding must also be granted asylum. *R–S–C,* 869 F.3d at 1188; *Garcia,* 856 F.3d at 42.

## IV. Regulatory Changes

### *A. Limitation on Eligibility for Asylum for Aliens Who Enter or Attempt To Enter the United States Across the Southern Land Border After Failing To Apply for Protection in at Least One Country Through Which They Transited En Route to the United States*

Pursuant to section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), the Departments are revising 8 CFR 208.13(c) and 8 CFR 1208.13(c) to add a new mandatory bar to eligibility for asylum for an alien who enters or attempts to enter the United States across the southern border, but who did not apply for protection from persecution or torture where it was available in at least one third country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which he or she transited en route to the United States, such as in Mexico via that country's robust protection regime. The bar would be subject to several limited exceptions, for (1) an alien who demonstrates that he or she applied for protection from persecution or torture in at least one of the countries through which the alien transited en route to the United States, and the alien received a final judgment denying the alien protection in such country; (2) an alien who demonstrates that he or she satisfies the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11; or (3) an alien who has transited en route to the United States through only a country or countries that were not parties to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol, or the CAT.

In all cases the burden would remain with the alien to establish eligibility for asylum consistent with current law, including—if the evidence indicates that a ground for mandatory denial applies—the burden to prove that a ground for mandatory denial of the asylum application does not apply. 8 CFR 1240.8(d).

In addition to establishing a new mandatory bar for asylum eligibility for an alien who enters or attempts to enter the United States across the southern border after failing to apply for protection from persecution or torture in at least one third country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which he or she transited en route to the United States, this rule would also modify certain aspects of the process for screening fear claims asserted by such aliens who are subject to expedited removal under section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1). Under current procedures, aliens subject to expedited removal may avoid being removed by making a threshold showing of a credible fear of persecution or torture at an initial screening interview. At present, those aliens are often released into the interior of the United States pending adjudication of such claims by an immigration court in removal proceedings under section 240 of the INA, especially if those aliens travel as family units. Once an alien is released, adjudications can take months or years to complete because of the increasing volume of claims and the need to expedite cases in which aliens have been detained. The Departments expect that a substantial proportion of aliens subject to a third-country-transit asylum eligibility bar would be subject to expedited removal, since approximately 234,534 aliens in FY 2018 who presented at a port of entry or were apprehended at the border were referred to expedited-removal proceedings. The procedural changes within expedited removal would be confined to aliens who are ineligible for asylum because they are subject to a regulatory bar for contravening the new mandatory third-country-transit asylum eligibility bar imposed by the present rule.

1. Under existing law, expedited-removal procedures—streamlined procedures for expeditiously reviewing claims and removing certain aliens—apply to those individuals who arrive at a port of entry or those who have entered illegally and are encountered by an immigration officer within 100 miles of the border and within 14 days of entering. *See* INA 235(b), 8 U.S.C. 1225(b); Designating Aliens For Expedited Removal, 69 FR 48877, 48880 (Aug. 11, 2004). To be subject to expedited removal, an alien must also be inadmissible under section 212(a)(6)(C) or (a)(7) of the INA, 8 U.S.C. 1182(a)(6)(C) or (a)(7), meaning that the alien has either tried to procure documentation through misrepresentation or lacks such documentation altogether. Thus, an

alien encountered in the interior of the United States who entered the country after the publication of this rule imposing the third-country-transit bar and who is not otherwise amenable to expedited removal would be placed in proceedings under section 240 of the INA.

Section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1), prescribes procedures in the expedited-removal context for screening an alien's eligibility for asylum. When these provisions were being debated in 1996, the House Judiciary Committee expressed particular concern that ''[e]xisting procedures to deny entry to and to remove illegal aliens from the United States are cumbersome and duplicative,'' and that ''[t]he asylum system has been abused by those who seek to use it as a means of 'backdoor' immigration.'' H.R. Rep. No. 104–469, pt. 1, at 107 (1996). The Committee accordingly described the purpose of expedited removal and related procedures as ''streamlin[ing] rules and procedures in the Immigration and Nationality Act to make it easier to deny admission to inadmissible aliens and easier to remove deportable aliens from the United States.'' *Id.* at 157; *see Am. Immigration Lawyers Ass'n* v. *Reno,* 18 F. Supp. 2d 38, 41 (D.D.C. 1998), *aff'd,* 199 F.3d 1352 (D.C. Cir. 2000) (rejecting several constitutional challenges to IIRIRA and describing the expedited-removal process as a ''summary removal process for adjudicating the claims of aliens who arrive in the United States without proper documentation'').

Congress thus provided that aliens ''inadmissible under [8 U.S.C.] 1182(a)(6)(C) or 1182(a)(7)'' shall be ''removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. 1158] or a fear of persecution.'' INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i); *see* INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii) (such aliens shall be referred ''for an interview by an asylum officer''). On its face, the statute refers only to proceedings to establish eligibility for an affirmative grant of asylum, not to statutory withholding of removal or CAT protection against removal to a particular country.

An alien referred for a credible-fear interview must demonstrate a ''credible fear,'' defined as a ''significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under [8 U.S.C. 1158].'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). According to the House report, ''[t]he credible-fear standard [wa]s designed to weed out non-meritorious cases so that only applicants with a likelihood of success will proceed to the regular asylum process.'' H.R. Rep. No. 104–69, at 158.

If the asylum officer determines that the alien lacks a credible fear, then the alien may request review by an immigration judge. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). If the immigration judge concurs with the asylum officer's negative credible-fear determination, then the alien shall be removed from the United States without further review by either the Board or the courts. INA 235(b)(1)(B)(iii)(I), (b)(1)(C), 8 U.S.C. 1225(b)(1)(B)(iii)(I), (b)(1)(C); INA 242(a)(2)(A)(iii), (e)(5), 8 U.S.C. 1252(a)(2)(A)(iii), (e)(5). By contrast, if the asylum officer or immigration judge determines that the alien has a credible fear—*i.e.,* ''a significant possibility . . . that the alien could establish eligibility for asylum,'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v)—then the alien, under current regulations, is placed in section 240 proceedings for a full hearing before an immigration judge, with appeal available to the Board and review in the Federal courts of appeals, *see* INA 235(b)(1)(B)(ii), (b)(2)(A), 8 U.S.C. 1225(b)(1)(B)(ii), (b)(2)(A); INA 242(a), 8 U.S.C. 1252(a); 8 CFR 208.30(e)(5), 1003.1.

By contrast, section 235 of the INA is silent regarding procedures for the granting of statutory withholding of removal and CAT protection; indeed, section 235 predates the legislation directing implementation of U.S. obligations under Article 3 of the CAT. *See* Foreign Affairs Reform and Restructuring Act of 1998 at sec. 2242(b) (requiring implementation of the CAT); IIRIRA at sec. 302 (revising section 235 of the INA to include procedures for dealing with inadmissible aliens who intend to apply for asylum). The legal standards for ultimately meeting the statutory standards for asylum on the merits versus statutory withholding or CAT protection are also different. Asylum requires an applicant to ultimately establish a ''well-founded fear'' of persecution, which has been interpreted to mean a ''reasonable possibility'' of persecution—a ''more generous'' standard than the ''clear probability'' of persecution or torture standard that applies to statutory withholding or CAT protection. *See INS* v. *Stevic,* 467 U.S. 407, 425, 429–30 (1984); *Santosa* v. *Mukasey,* 528 F.3d 88, 92 & n.1 (1st Cir. 2008); *compare* 8 CFR 1208.13(b)(2)(i)(B), *with* 8 CFR 1208.16(b)(2), (c)(2). As a result, applicants who establish eligibility for asylum are not necessarily eligible for statutory withholding or CAT protection.

Current regulations instruct USCIS adjudicators and immigration judges to treat an alien's request for asylum in expedited-removal proceedings under section 1225(b) as a request for statutory withholding and CAT protection as well. *See* 8 CFR 208.13(c)(1), 208.30(e)(2)–(4), 1208.13(c)(1), 1208.16(a). In the context of expedited-removal proceedings, ''credible fear of persecution'' is defined to mean a ''significant possibility'' that the alien ''could establish eligibility for asylum,'' not the CAT or statutory withholding. INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Regulations nevertheless have generally provided that aliens in expedited removal should be subject to the same process and screening standard for considering statutory withholding of removal claims under INA 241(b)(3), 8 U.S.C. 1231(b)(3), and claims for protection under the CAT regulations, as they are for asylum claims. *See* 8 CFR 208.30(e)(2)–(4).

Thus, when the former Immigration and Naturalization Service provided for claims for statutory withholding of removal and CAT protection to be considered in the same expedited-removal proceedings as asylum, the result was that if an alien showed that there was a significant possibility of establishing eligibility for asylum and was therefore referred for removal proceedings under section 240 of the INA, any potential statutory withholding and CAT claims the alien might have had were referred as well. This was done on the assumption that it would not ''disrupt[] the streamlined process established by Congress to circumvent meritless claims.'' Regulations Concerning the Convention Against Torture, 64 FR 8478, 8485 (Feb. 19, 1999). But while the INA authorizes the Attorney General and Secretary to provide for consideration of statutory withholding and CAT claims together with asylum claims or other matters that may be considered in removal proceedings, the INA does not mandate that approach, *see Foti* v. *INS,* 375 U.S. 217, 229–30 & n.16 (1963), or that they be considered in the same manner.

Since 1999, regulations also have provided for a distinct ''reasonable fear'' screening process for certain aliens who are categorically ineligible for asylum and can thus make claims only for statutory withholding or CAT protection. *See* 8 CFR 208.31. Specifically, if an alien is subject to having a previous order of removal reinstated or is a non-permanent

resident alien subject to an administrative order of removal resulting from an aggravated felony conviction, then he or she is categorically ineligible for asylum. *See id.* § 208.31(a), (e). Such an alien can be placed in withholding-only proceedings to adjudicate his statutory withholding or CAT claims, but only if he first establishes a ''reasonable fear'' of persecution or torture through a screening process that tracks the credible-fear process. *See id.* § 208.31(c), (e).

To establish a reasonable fear of persecution or torture, an alien must establish a ''reasonable possibility that [the alien] would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal.'' *Id.* § 208.31(c). ''This . . . screening process is modeled on the credible-fear screening process, but requires the alien to meet a higher screening standard.'' Regulations Concerning the Convention Against Torture, 64 FR at 8485; *see also Garcia* v. *Johnson,* No. 14–CV–01775, 2014 WL 6657591, at *2 (N.D. Cal. Nov. 21, 2014) (describing the aim of the regulations as providing ''fair and efficient procedures'' in reasonable-fear screening that would comport with U.S. international obligations).

Significantly, when establishing the reasonable-fear screening process, DOJ explained that the two affected categories of aliens should be screened based on the higher reasonable-fear standard because, ''[u]nlike the broad class of arriving aliens who are subject to expedited removal, these two classes of aliens are ineligible for asylum,'' and may be entitled only to statutory withholding of removal or CAT protection. Regulations Concerning the Convention Against Torture, 64 FR at 8485. ''Because the standard for showing entitlement to these forms of protection (a clear probability of persecution or torture) is significantly higher than the standard for asylum (a well-founded fear of persecution), the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher.'' *Id.*

2. Drawing on the established framework for considering whether to grant withholding of removal or CAT protection in the reasonable-fear context, this interim rule establishes a bifurcated screening process for aliens subject to expedited removal who are ineligible for asylum by virtue of falling subject to this rule's third-country-transit eligibility bar, but who express a fear of return or seek statutory withholding or CAT protection. The Attorney General and Secretary have broad authority to implement the immigration laws, *see* INA 103, 8 U.S.C. 1103, including by establishing regulations, *see* INA 103(a)(3), 8 U.S.C. 1103(a)(3), and to regulate ''conditions or limitations on the consideration of an application for asylum,'' *id.* 1158(d)(5)(B). Furthermore, the Secretary has the authority—in his ''sole and unreviewable discretion,'' the exercise of which may be ''modified at any time''—to designate additional categories of aliens that will be subject to expedited-removal procedures, so long as the designated aliens have not been admitted or paroled nor continuously present in the United States for two years. INA 235(b)(1)(A)(iii), 8 U.S.C. 1225(b)(1)(A)(iii). The Departments have frequently invoked these authorities to establish or modify procedures affecting aliens in expedited-removal proceedings, as well as to adjust the categories of aliens subject to particular procedures within the expedited-removal framework.

This rule does not change the credible-fear standard for asylum claims, although the regulation would expand the scope of the inquiry in the process. An alien who is subject to the third-country-transit bar and nonetheless has entered the United States along the southern land border after the effective date of this rule creating the bar would be ineligible for asylum and would thus not be able to establish a ''significant possibility . . . [of] eligibility for asylum under section 1158.'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Consistent with section 235(b)(1)(B)(iii)(III) of the INA, the alien could still obtain review from an immigration judge regarding whether the asylum officer correctly determined that the alien was subject to a limitation or suspension on entry imposed by the third-country-transit bar. Further, consistent with section 235(b)(1)(B) of the INA, if the immigration judge reversed the asylum officer's determination, the alien could assert the asylum claim in section 240 proceedings.

Aliens determined to be ineligible for asylum by virtue of falling subject to the third-country-transit bar, however, would still be screened, but in a manner that reflects that their only viable claims could be for statutory withholding or CAT protection pursuant to 8 CFR 208.30(e)(2)–(4) and 1208.16. After determining the alien's ineligibility for asylum under the credible-fear standard, the asylum officer would apply the long-established reasonable-fear standard to assess whether further proceedings on a possible statutory withholding or CAT protection claim are warranted. If the asylum officer determined that the alien had not established the requisite reasonable fear, the alien then could seek review of that decision from an immigration judge (just as the alien may under existing 8 CFR 208.30 and 208.31), and would be subject to removal only if the immigration judge agreed with the negative reasonable-fear finding. Conversely, if either the asylum officer or the immigration judge determined that the alien cleared the reasonable-fear threshold, the alien would be put in section 240 proceedings, just like aliens who receive a positive credible-fear determination for asylum. Employing a reasonable-fear standard in this context, for this category of ineligible aliens, would be consistent with DOJ's longstanding rationale that ''aliens ineligible for asylum,'' who could only be granted statutory withholding of removal or CAT protection, should be subject to a different screening standard that would correspond to the higher bar for actually obtaining these forms of protection. *See* Regulations Concerning the Convention Against Torture, 64 FR at 8485 (''Because the standard for showing entitlement to these forms of protection . . . is significantly higher than the standard for asylum[,] . . . the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher.'').

3. The screening process established by the interim rule accordingly will proceed as follows. For an alien subject to expedited removal, DHS will ascertain whether the alien seeks protection, consistent with INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii). All such aliens will continue to go before an asylum officer for screening, consistent with INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B). The asylum officer will ask threshold questions to elicit whether an alien is ineligible for a grant of asylum pursuant to the third-country-transit bar. If there is a significant possibility that the alien is not subject to the eligibility bar (and the alien otherwise demonstrates that there is a significant possibility that he or she can establish eligibility for asylum), then the alien will have established a credible fear.

If, however, an alien lacks a significant possibility of eligibility for asylum because of the third-country-transit bar, then the asylum officer will make a negative credible-fear finding.

The asylum officer will then apply the reasonable-fear standard to assess the alien's claims for statutory withholding of removal or CAT protection.

An alien subject to the third-country-transit asylum eligibility bar who clears the reasonable-fear screening standard will be placed in section 240 proceedings, just as an alien who clears the credible-fear standard will be. In those proceedings, the alien will also have an opportunity to raise whether the alien was correctly identified as subject to the third-country-transit ineligibility bar to asylum, as well as other claims. If an immigration judge determines that the alien was incorrectly identified as subject to the third-country-transit bar, the alien will be able to apply for asylum. Such aliens can appeal the immigration judge's decision in these proceedings to the Board and then seek review from a Federal court of appeals.

Conversely, an alien who is found to be subject to the third-country-transit asylum eligibility bar and who does not clear the reasonable-fear screening standard can obtain review of both of those determinations before an immigration judge, just as immigration judges currently review negative credible-fear and reasonable-fear determinations. If the immigration judge finds that either determination was incorrect, then the alien will be placed into section 240 proceedings. In reviewing the determinations, the immigration judge will decide de novo whether the alien is subject to the third-country-transit asylum eligibility bar. If, however, the immigration judge affirms both determinations, then the alien will be subject to removal without further appeal, consistent with the existing process under section 235 of the INA. In short, aliens subject to the third-country-transit asylum eligibility bar will be processed through existing procedures by DHS and EOIR in accordance with 8 CFR 208.30 and 1208.30, but will be subject to the reasonable-fear standard as part of those procedures with respect to their statutory withholding and CAT protection claims.

4. The above process will not affect the process in 8 CFR 208.30(e)(5) (to be redesignated as 8 CFR 208.30(e)(5)(i) under this rule) for certain existing statutory bars to asylum eligibility. Under that regulatory provision, many aliens who appear to fall within an existing statutory bar, and thus appear to be ineligible for asylum, can nonetheless be placed in section 240 proceedings and have their asylum claim adjudicated by an immigration judge, if they establish a credible fear of persecution, followed by further review of any denial of their asylum application before the Board and the courts of appeals.

*B. Anticipated Effects of the Rule*

When the expedited procedures were first implemented approximately two decades ago, very few aliens within those proceedings claimed a fear of persecution. Since then, the numbers have dramatically increased. In FY 2018, USCIS received 99,035 credible-fear claims, a 175 percent increase from five years earlier and a 1,883 percent increase from ten years earlier. FY 2019 is on track to see an even greater increase in claims, with more than 35,000 credible-fear claims received in the first four months of the fiscal year. This unsustainable, increased burden on the U.S. immigration system also extends to DOJ: Immigration courts received over 162,000 asylum applications in FY 2018, a 270 percent increase from five years earlier.

This dramatic increase in credible-fear claims has been complicated by a demographic shift in the alien population crossing the southern border from Mexican single adult males to predominantly Central American family units and unaccompanied alien minors. Historically, aliens coming unlawfully to the United States along the southern land border were predominantly Mexican single adult males who generally were removed or who voluntarily departed within 48 hours if they had no legal right to stay in the United States. As of January 2019, more than 60 percent are family units and unaccompanied alien children; 60 percent are non-Mexican. In FY 2017, CBP apprehended 94,285 family units from the Northern Triangle countries at the southern land border. Of those family units, 99 percent remained in the country (as of January 2019). And, while Mexican single adults who are not legally eligible to remain in the United States may be immediately repatriated to Mexico, it is more difficult to expeditiously repatriate family units and unaccompanied alien children not from Mexico or Canada. And the long and arduous journey of children to the United States brings with it a great risk of harm that could be relieved if individuals were to more readily avail themselves of legal protection from persecution in a third country closer to the child's country of origin.

Even though the overall number of apprehensions of illegal aliens was relatively higher two decades ago than it is today (around 1.6 million in 2000), given the demographic of aliens arriving to the United States at that time, they could be processed and removed more quickly, often without requiring detention or lengthy court proceedings. Moreover, apprehension numbers in past years often reflected individuals being apprehended multiple times over the course of a given year.

In recent years, the United States has seen a large increase in the number and proportion of inadmissible aliens subject to expedited removal who claim a fear of persecution or torture and are subsequently placed into removal proceedings before an immigration judge. This is particularly true for non-Mexican aliens, who now constitute the overwhelming majority of aliens encountered along the southern border with Mexico, and the overwhelming majority of aliens who assert claims of fear. But while the number of non-Mexican aliens encountered at the southern border has dramatically increased, a substantial number of such aliens failed to apply for asylum or refugee status in Mexico—despite the availability of a functioning asylum system.

In May of FY 2017, DHS recorded 7,108 enforcement actions with non-Mexican aliens along the southern border—which accounted for roughly 36 percent of all enforcement actions along the southern border that month. In May of FY 2018, DHS recorded 32,477 enforcement actions with non-Mexican aliens along the southern border—which accounted for roughly 63 percent of that month's enforcement actions along the southern border. And in May of FY 2019, DHS recorded 121,151 enforcement actions with non-Mexican aliens along the southern border—which accounted for approximately 84 percent of enforcement actions along the southern border that month. Accordingly, the number of enforcement actions involving non-Mexican aliens increased by more than 1,600 percent from May FY 2017 to May FY 2019, and the percentage of enforcement actions at the southern land border involving non-Mexican aliens increased from 36 percent to 84 percent. Overall, southern border non-Mexican enforcement actions in FY 2017 totaled 233,411; they increased to 298,503 in FY 2018; and, in the first eight months of FY 2019 (through May) they already total 524,446.

This increase corresponds to a growing trend over the past decade, in which the overall percentage of all aliens subject to expedited removal who are referred for a credible-fear interview by DHS jumped from approximately 5 percent to above 40 percent. The total number of aliens referred by DHS for credible-fear screening increased from

fewer than 5,000 in FY 2008 to more than 99,000 in FY 2018. The percentage of aliens who receive asylum remains small. In FY 2018, DHS asylum officers found over 75 percent of interviewed aliens to have a credible fear of persecution or torture and referred them for proceedings before an immigration judge within EOIR under section 240 of the INA. In addition, EOIR immigration judges overturn about 20 percent of the negative credible-fear determinations made by asylum officers, finding those aliens also to have a credible fear. Such aliens are referred to immigration judges for full hearings on their asylum claims.

But many aliens who receive a positive credible-fear determination never file an application for asylum. From FY 2016 through FY 2018, approximately 40 percent of aliens who received a positive credible-fear determination failed to file an asylum application. And of those who did proceed to file asylum applications, relatively few established that they should be granted such relief. From FY 2016 through FY 2018, among aliens who received a positive credible-fear determination, only 12,062 aliens [4]—an average of 4,021 per year—were granted asylum (14 percent of all completed asylum cases, and about 36 percent of asylum cases decided on the merits).[5] The many cases that lack merit occupy a large portion of limited docket time and absorb scarce government resources, exacerbating the backlog and diverting attention from other meritorious cases. Indeed, despite DOJ deploying the largest number of immigration judges in history and completing historic numbers of cases, a significant backlog remains. There are more than 900,000 pending cases in immigration courts, at least 436,000 of which include an asylum application.

Apprehending and processing this growing number of aliens who cross illegally into the United States and invoke asylum procedures consumes an ever-increasing amount of resources of DHS, which must surveil, apprehend, screen, and process the aliens who enter the country and must represent the U.S. Government in cases before immigration judges, the Board, and the U.S. Courts of Appeals. The interim rule seeks to ameliorate these strains on the immigration system.

The rule also aims to further the humanitarian purposes of asylum by prioritizing individuals who are unable to obtain protection from persecution elsewhere and individuals who have been victims of a ''severe form of trafficking in persons'' as defined by 8 CFR 214.11,[6] many of whom do not volitionally transit through a third country to reach the United States.[7] By deterring meritless asylum claims and de-prioritizing the applications of individuals who could have sought protection in another country before reaching the United States, the Departments seek to ensure that those asylees who need relief most urgently are better able to obtain it.

The interim rule would further this objective by restricting the claims of aliens who, while ostensibly fleeing persecution, chose not to seek protection at the earliest possible opportunity. An alien's decision not to apply for protection at the first available opportunity, and instead wait for the more preferred destination of the United States, raises questions about the validity and urgency of the alien's claim and may mean that the claim is less likely to be successful.[8] By barring such claims, the interim final rule would encourage those fleeing genuine persecution to seek protection as soon as possible and dissuade those with non-viable claims, including aliens merely seeking employment, from further overburdening the Nation's immigration system.

Many of the aliens who wait to seek asylum until they arrive in the United States transit through not just one country, but multiple countries in which they may seek humanitarian protection. Yet they do not avail themselves of that option despite their claims of fear of persecution or torture in their home country. Under these circumstances, it is reasonable to question whether the aliens genuinely fear persecution or torture, or are simply economic migrants seeking to exploit our overburdened immigration system by filing a meritless asylum claim as a way of entering, remaining, and legally obtaining employment in the United States.[9]

All seven countries in Central America plus Mexico are parties to both the Refugee Convention and the Refugee Protocol. Moreover, Mexico has expanded its capacity to adjudicate asylum claims in recent years, and the number of claims submitted in Mexico has increased. In 2016, the Mexican government received 8,789 asylum applications. In 2017, it received 14,596. In 2018, it received 29,623 applications. And in just the first three months of 2019, Mexico received 12,716 asylum

[4] These numbers are based on data generated by EOIR on April 12, 2019.

[5] Completed cases include both those in which an asylum application was filed and those in which an application was not filed. Cases decided on the merits include only those completed cases in which an asylum application was filed and the immigration judge granted or denied that application.

[6] ''Severe form of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.'' 8 CFR 214.11. Determinations made with respect to this exception will not be binding on Federal departments or agencies in subsequent determinations of eligibility for T or U nonimmigrant status under section 101(a)(15)(T) or (U) of the Act or for benefits or services under 22 U.S.C. 7105 or 8 U.S.C. 1641(c)(4).

[7] This rule does not provide for a categorical exception for unaccompanied alien children (''UAC''), as defined in 6 U.S.C. 279(g)(2). The Departments recognize that UAC are exempt from two of three statutory bars to applying for asylum: The ''safe third country'' bar and the one-year filing deadline, *see* INA 208(a)(2)(E), 8 U.S.C. 1158(a)(2)(E). Congress, however, did not exempt UAC from the bar on filing successive applications for asylum, *see* INA 208(a)(2)(C), 8 U.S.C. 1158(a)(2)(C), the various bars to asylum eligibility in INA 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A), or the bars, like this one, established pursuant to the Departments' authorities under INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). But UAC, like others subject to this rule, will be able to apply for withholding of removal under INA section 241(b)(3), 8 U.S.C. 1231(b)(3), or the CAT regulations. UAC will not be returned to the transit country for consideration of these protection claims.

[8] Indeed, the Board has previously held that this is a relevant consideration in asylum applications. In *Matter of Pula,* 19 I&N Dec. 467, 473–74 (BIA 1987), the Board stated that ''in determining whether a favorable exercise of discretion is warranted'' for an applicant under the asylum statute, INA 208(a), 8 U.S.C. 1158(2)(a), ''[a]mong those factors which should be considered are whether the alien passed through any other countries or arrived in the United States directly from his country, whether orderly refugee procedures were in fact available to help him in any country he passed through, and whether he made any attempts to seek asylum before coming to the United States.'' Consistent with the reasoning in *Pula,* this rule establishes that an alien who failed to request asylum in a country where it was available is not eligible for asylum in the United States. Even though the Board in *Pula* indicated that a range of factors is relevant to evaluating discretionary asylum relief under the general *statutory* asylum provision, the INA also authorizes the establishment of additional limitations to asylum eligibility by *regulation*—beyond those embedded in the statute. *See* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). This rule uses that authority to establish one of the factors specified as relevant in *Pula* as the foundation of a new categorical asylum bar. This rule's prioritization of the third-country-transit factor, considered as just one of many factors in *Pula,* is justified, as explained above, by the increased numbers and changed nature of asylum claims in recent years.

[9] Economic migrants are not eligible for asylum. *See, e.g., In re: Brenda Leticia Sonday-Chavez,* No. A–7–969, 2017 WL 4946947, at *1 (BIA Sept. 7, 2017) (''[E]conomic reasons for coming to the United States . . . would generally not render an alien eligible for relief from removal.''); *see also Sale* v. *Haitian Centers Council Inc.,* 509 U.S. 155, 161–62 & n.11 (1993); *Hui Zhuang* v. *Gonzales,* 471 F.3d 884, 890 (8th Cir. 2006) (''Fears of economic hardship or lack of opportunity do not establish a well-founded fear of persecution.'').

applications, putting Mexico on track to receive more than 50,000 asylum applications by the end of 2019 if that quarterly pace continues. Instead of availing themselves of these available protections, many aliens transiting through Central America and Mexico decide not to seek protection, likely based upon a preference for residing in the United States. The United States has experienced an overwhelming surge in the number of non-Mexican aliens crossing the southern border and seeking asylum. This overwhelming surge and its accompanying burden on the United States has eroded the integrity of our borders, and it is inconsistent with the national interest to provide a discretionary benefit to those who choose not to seek protection at the first available opportunity.

The interim final rule also is in keeping with the efforts of other liberal democracies to prevent forum-shopping by directing asylum-seekers to present their claims in the first safe country in which they arrive. In 1990, European states adopted the Dublin Regulation in response to an asylum crisis as refugees and economic migrants fled communism at the end of the Cold War; it came into force in 1997. *See* Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities, 1997 O.J. (C 254). The United Nations High Commission for Refugees praised the Dublin Regulation's ''commendable efforts to share and allocate the burden of review of refugee and asylum claims.'' *See* UN High Comm'r for Refugees, *UNHCR Position on Conventions Recently Concluded in Europe (Dublin and Schengen Conventions),* 3 Eur. Series 2, 385 (1991). Now in its third iteration, the Dublin III Regulation sets asylum criteria and protocol for the European Union (''EU''). It instructs that asylum claims ''shall be examined by a single Member State.'' Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013, Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast), 2013 O.J. (L 180) 31, 37. Typically, for irregular migrants seeking asylum, the member state by which the asylum applicant first entered the EU ''shall be responsible for examining the application for international protection.'' *Id.* at 40. Generally, when a third-country national seeks asylum in a member state other than the state of first entry into the EU, that state may transfer the asylum-seeker back to the state of first safe entry. *Id.* at 2.

This rule also seeks to curtail the humanitarian crisis created by human smugglers bringing men, women, and children across the southern border. By reducing a central incentive for aliens without a genuine need for asylum to cross the border—the hope of a lengthy asylum process that will enable them to remain in the United States for years despite their statutory ineligibility for relief—the rule aims to reduce human smuggling and its tragic effects.

Finally, as discussed further below, this rule will facilitate ongoing diplomatic negotiations with Mexico and the Northern Triangle countries regarding general migration issues, related measures employed to control the flow of aliens (such as the Migrant Protection Protocols), and the humanitarian and security crisis along the southern land border between the United States and Mexico.

In sum, the rule would bar asylum for any alien who has entered or attempted to enter the United States across the southern border and who has failed to apply for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States, unless the alien demonstrates that the alien only transited through countries that were not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the CAT, or the alien was a victim of ''a severe form of trafficking in persons'' as defined by 8 CFR 214.11.

Such a rule would ensure that the ever-growing influx of meritless asylum claims do not further overwhelm the country's immigration system, would promote the humanitarian purposes of asylum by speeding relief to those who need it most (*i.e.,* individuals who have no alternative country where they can escape persecution or torture or who are victims of a severe form of trafficking and thus did not volitionally travel through a third country to reach the United States), would help curtail the humanitarian crisis created by human smugglers, and would aid U.S. negotiations on migration issues with foreign countries.

## V. Regulatory Requirements

### *A. Administrative Procedure Act*

#### 1. Good Cause Exception

While the Administrative Procedure Act (''APA'') generally requires agencies to publish notice of a proposed rulemaking in the **Federal Register** for a period of public comment, it provides an exception ''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). That exception relieves agencies of the notice-and-comment requirement in emergency situations, or in circumstances where ''the delay created by the notice and comment requirements would result in serious damage to important interests.'' *Woods Psychiatric Inst.* v. *United States,* 20 Cl. Ct. 324, 333 (1990), *aff'd,* 925 F.2d 1454 (Fed. Cir. 1991); *see also United States* v. *Dean,* 604 F.3d 1275, 1279 (11th Cir. 2010); *Nat'l Fed'n of Federal Emps.* v. *Nat'l Treasury Emps. Union,* 671 F.2d 607, 611 (D.C. Cir. 1982). Agencies have previously relied on that exception in promulgating immigration-related interim rules.[10] Furthermore, DHS has relied on that exception as additional legal justification when issuing orders related to expedited removal—a context in which Congress explicitly recognized the need for dispatch in addressing large volumes of aliens by giving the Secretary significant discretion to ''modify at any time'' the classes of aliens who would be subject to such procedures. *See* INA 235(b)(1)(A)(iii)(I), 8 U.S.C. 1225(b)(1)(A)(iii)(I).[11]

[10] *See, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (interim rule citing good cause to immediately require additional documentation from certain Caribbean agricultural workers to avoid ''an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule''); Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 2, 2003) (interim rule claiming the good cause exception for suspending certain automatic registration requirements for nonimmigrants because ''without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews'' over a six-month period).

[11] *See, e.g.,* Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017) (identifying the APA good cause factors as additional justification for issuing an immediately effective expedited removal order because the ability to detain certain Cuban nationals ''while admissibility and identity are determined and protection claims are adjudicated, as well as to quickly remove those without protection claims or claims to lawful status,

The Departments have concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this rule. Notice and comment on this rule, along with a 30-day delay in its effective date, would be impracticable and contrary to the public interest. The Departments have determined that immediate implementation of this rule is essential to avoid a surge of aliens who would have strong incentives to seek to cross the border during pre-promulgation notice and comment or during the 30-day delay in the effective date under 5 U.S.C. 553(d). As courts have recognized, smugglers encourage migrants to enter the United States based on changes in U.S. immigration policy, and in fact ''the number of asylum seekers entering as families has risen'' in a way that ''suggests a link to knowledge of those policies.'' *East Bay Sanctuary Covenant* v. *Trump,* 354 F. Supp. 3d 1094, 1115 (N.D. Cal. 2018). If this rule were published for notice and comment before becoming effective, ''smugglers might similarly communicate the Rule's potentially relevant change in U.S. immigration policy, albeit in non-technical terms,'' and the risk of a surge in migrants hoping to enter the country before the rule becomes effective supports a finding of good cause under 5 U.S.C. 553. *See id.*

This determination is consistent with the historical view of the agencies regulating in this area. DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017). DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' *Id.* DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' *Id.* DHS concluded that ''a surge could result in significant loss of human life.'' *Id.; accord, e.g.,* Designating Aliens for Expedited Removal, 69 FR 48877 (Aug. 11, 2004) (noting similar destabilizing incentives for a surge during a delay in the effective date); Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

DOJ and DHS raised similar concerns and drew similar conclusions in the November 2018 joint interim final rule that limited eligibility for asylum for aliens, subject to a bar on entry under certain presidential proclamations. *See* 83 FR at 55950. These same concerns would apply to an even greater extent to this rule. Pre-promulgation notice and comment, or a delay in the effective date, would be destabilizing and would jeopardize the lives and welfare of aliens who could surge to the border to enter the United States before the rule took effect. The Departments' experience has been that when public announcements are made regarding changes in our immigration laws and procedures, there are dramatic increases in the numbers of aliens who enter or attempt to enter the United States along the southern border. *See East Bay Sanctuary Covenant,* 354 F. Supp. 3d at 1115 (citing a newspaper article suggesting that such a rush to the border occurred due to knowledge of a pending regulatory change in immigration law). Thus, there continues to be an ''urgent need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and crimes associated with human trafficking and alien smuggling operations.'' 69 FR at 48878.

Furthermore, an additional surge of aliens who sought to enter via the southern border prior to the effective date of this rule would be destabilizing to the region, as well as to the U.S. immigration system. The massive increase in aliens arriving at the southern border who assert a fear of persecution is overwhelming our immigration system as a result of a variety of factors, including the significant proportion of aliens who are initially found to have a credible fear and therefore are referred to full hearings on their asylum claims; the huge volume of claims; a lack of detention space; and the resulting high rate of release into the interior of the United States of aliens with a positive credible-fear determination, many of whom then abscond without pursuing their asylum claims. Recent initiatives to track family unit cases revealed that close to 82 percent of completed cases have resulted in an *in absentia* order of removal. A large additional influx of aliens who intend to enter unlawfully or who lack proper documentation to enter this country, all at once, would exacerbate the existing border crisis. This concern is particularly acute in the current climate in which illegal immigration flows fluctuate significantly in response to news events. This interim final rule is thus a practical means to address the time-sensitive influx of aliens and avoid creating an even larger short-term influx. An extended notice-and-comment rulemaking process would be impracticable and self-defeating for the public.

2. Foreign Affairs Exemption

Alternatively, the Departments may forgo notice-and-comment procedures and a delay in the effective date because this rule involves a ''foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1), and proceeding through notice and comment may ''provoke definitely undesirable international consequences,'' *City of New York* v. *Permanent Mission of India to United Nations,* 618 F.3d 172, 201 (2d Cir. 2010) (quoting the description of the purpose of the foreign affairs exception in H.R. Rep. No. 79–1980, 69th Cong., 2d Sess. 257 (1946)). The flow of aliens across the southern border, unlawfully or without appropriate travel documents, directly implicates the foreign policy and national security interests of the United States. *See, e.g.,* Exec. Order 13767 (Jan. 25, 2017) (discussing the important national security and foreign affairs-related interests associated with securing the border); Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System (Apr. 29, 2019) (''This strategic exploitation of our Nation's humanitarian programs undermines our Nation's security and sovereignty.''); *see also, e.g., Malek-Marzban* v. *INS,* 653 F.2d 113, 115–16 (4th Cir. 1981) (finding that a regulation

is a necessity for national security and public safety''); Designating Aliens For Expedited Removal, 69 FR 48877, 48880 (Aug. 11, 2004) (identifying the APA good cause factors as additional justification for issuing an immediately effective order to expand expedited removal due to ''[t]he large volume of illegal entries, and attempted illegal entries, and the attendant risks to national security presented by these illegal entries,'' as well as ''the need to deter foreign nationals from undertaking dangerous border crossings, and thereby prevent the needless deaths and crimes associated with human trafficking and alien smuggling operations'').

requiring the expedited departure of Iranians from the United States in light of the international hostage crisis clearly related to foreign affairs and fell within the notice-and-comment exception).

This rule will facilitate ongoing diplomatic negotiations with foreign countries regarding migration issues, including measures to control the flow of aliens into the United States (such as the Migrant Protection Protocols), and the urgent need to address the current humanitarian and security crisis along the southern land border between the United States and Mexico. *See City of New York,* 618 F.3d at 201 (finding that rules related to diplomacy with a potential impact on U.S. relations with other countries fall within the scope of the foreign affairs exemption). Those ongoing discussions relate to proposals for how these other countries could increase efforts to help reduce the flow of illegal aliens north to the United States and encourage aliens to seek protection at the safest and earliest point of transit possible.

Those negotiations would be disrupted if notice-and-comment procedures preceded the effective date of this rule—provoking a disturbance in domestic politics in Mexico and the Northern Triangle countries, and eroding the sovereign authority of the United States to pursue the negotiating strategy it deems to be most appropriate as it engages its foreign partners. *See, e.g., Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (the foreign affairs exemption facilitates ''more cautious and sensitive consideration of those matters which so affect relations with other Governments that . . . public rulemaking provisions would provoke definitely undesirable international consequences'' (internal quotation marks omitted)). During a notice-and-comment process, public participation and comments may impact and potentially harm the goodwill between the United States and Mexico and the Northern Triangle countries—actors with whom the United States must partner to ensure that refugees can more effectively find refuge and safety in third countries. *Cf. Rajah* v. *Mukasey,* 544 F.3d 427, 437–38 (2d Cir. 2008) (''[R]elations with other countries might be impaired if the government were to conduct and resolve a public debate over why some citizens of particular countries were a potential danger to our security.'').

In addition, the longer that the effective date of the interim rule is delayed, the greater the number of people who will pass through third countries where they may have otherwise received refuge and reach the U.S. border, which has little present capacity to provide assistance. *Cf. East Bay Sanctuary Covenant* v. *Trump,* 909 F.3d 1219, 1252 (9th Cir. 2018) (''Hindering the President's ability to implement a new policy in response to a current foreign affairs crisis is the type of 'definitely undesirable international consequence' that warrants invocation of the foreign affairs exception.''). Addressing this crisis will be more effective and less disruptive to long-term U.S. relations with Mexico and the Northern Triangle countries the sooner that this interim final rule is in place to help address the enormous flow of aliens through these countries to the southern U.S. border. *Cf. Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.,* 751 F.2d at 1249 (''The timing of an announcement of new consultations or quotas may be linked intimately with the Government's overall political agenda concerning relations with another country.''); *Rajah,* 544 F.3d at 438 (finding that the notice-and-comment process can be ''slow and cumbersome,'' which can negatively impact efforts to secure U.S. national interests, thereby justifying application of the foreign affairs exemption); *East Bay Sanctuary Covenant,* 909 F.3d at 1252–53 (9th Cir. 2018) (suggesting that reliance on the exemption is justified where the Government ''explain[s] how immediate *publication* of the Rule, instead of *announcement* of a proposed rule followed by a thirty-day period of notice and comment'' is necessary in light of the Government's foreign affairs efforts).

The United States and Mexico have been engaged in ongoing discussions regarding both regional and bilateral approaches to asylum. This interim final rule will strengthen the ability of the United States to address the crisis at the southern border and therefore facilitate the likelihood of success in future negotiations. This rule thus supports the President's foreign policy with respect to Mexico and the Northern Triangle countries in this area and is exempt from the notice-and-comment and delayed-effective-date requirements in 5 U.S.C. 553. *See Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.,* 751 F.2d at 1249 (noting that the foreign affairs exception covers agency actions ''linked intimately with the Government's overall political agenda concerning relations with another country''); *Yassini* v. *Crosland,* 618 F.2d 1356, 1361 (9th Cir. 1980) (because an immigration directive ''was implementing the President's foreign policy,'' the action ''fell within the foreign affairs function and good cause exceptions to the notice and comment requirements of the APA'').

Invoking the APA's foreign affairs exception is also consistent with past rulemakings. In 2016, for example, in response to diplomatic developments between the United States and Cuba, DHS changed its regulations concerning flights to and from the island via an immediately effective interim final rule. Flights to and From Cuba, 81 FR 14948, 14952 (Mar. 21, 2016). In a similar vein, DHS and the State Department recently provided notice that they were eliminating an exception to expedited removal for certain Cuban nationals. The notice explained that the change in policy was consistent with the foreign affairs exception for rules subject to notice-and-comment requirements because the change was central to ongoing negotiations between the two countries. Eliminating Exception To Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 FR 4902, 4904–05 (Jan. 17, 2017).

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

*C. Unfunded Mandates Reform Act of 1995*

This interim final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*D. Congressional Review Act*

This interim final rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets.

*E. Executive Order 12866, Executive Order 13563, and Executive Order 13771 (Regulatory Planning and Review)*

This rule is not subject to Executive Order 12866 as it implicates a foreign affairs function of the United States related to ongoing discussions with potential impact on a set of specified international relationships. As this is not a regulatory action under Executive Order 12866, it is not subject to Executive Order 13771.

*F. Executive Order 13132 (Federalism)*

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*G. Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

*H. Paperwork Reduction Act*

This rule does not propose new, or revisions to existing, ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

**List of Subjects**

*8 CFR Part 208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 1003*

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

*8 CFR Part 1208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

**Regulatory Amendments**

## DEPARTMENT OF HOMELAND SECURITY

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

## PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

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

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2.

■ 2. Section 208.13 is amended by adding paragraphs (c)(4) and (5) to read as follows:

**§ 208.13 Establishing asylum eligibility.**

* * * * *

(c) * * *

(4) *Additional limitation on eligibility for asylum.* Notwithstanding the provisions of § 208.15, any alien who enters, attempts to enter, or arrives in the United States across the southern land border on or after July 16, 2019, after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, shall be found ineligible for asylum unless:

(i) The alien demonstrates that he or she applied for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States, and the alien received a final judgment denying the alien protection in such country;

(ii) The alien demonstrates that he or she satisfies the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11; or

(iii) The only countries through which the alien transited en route to the United States were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(5) *Non-binding determinations.* Determinations made with respect to paragraph (c)(4)(ii) of this section are not binding on Federal departments or agencies in subsequent determinations of eligibility for T or U nonimmigrant status under section 101(a)(15)(T) or (U) of the INA or for benefits or services under 22 U.S.C. 7105 or 8 U.S.C. 1641(c)(4).

■ 3. In § 208.30, revise the section heading, the first sentence of paragraph (e)(2), and paragraphs (e)(3) and (5) to read as follows:

**§ 208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act, or who failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States.**

* * * * *

(e) * * *

(2) Subject to paragraph (e)(5) of this section, an alien will be found to have a credible fear of persecution if there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, the alien can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act. * * *

(3) Subject to paragraph (e)(5) of this section, an alien will be found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to § 208.16 or § 208.17.

* * * * *

(5)(i) Except as provided in this paragraph (e)(5)(i) or paragraph (e)(6) of this section, if an alien is able to establish a credible fear of persecution but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Department of Homeland Security shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim, if the alien is not a stowaway. If the alien is a stowaway, the Department shall place the alien in proceedings for consideration of the alien's claim pursuant to § 208.2(c)(3).

(ii) If the alien is found to be an alien described in § 208.13(c)(3), then the asylum officer shall enter a negative credible fear determination with respect to the alien's intention to apply for asylum. The Department shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's

claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture, if the alien establishes, respectively, a reasonable fear of persecution or torture. However, if an alien fails to establish, during the interview with the asylum officer, a reasonable fear of either persecution or torture, the asylum officer will provide the alien with a written notice of decision, which will be subject to immigration judge review consistent with paragraph (g) of this section, except that the immigration judge will review the reasonable fear findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g) and in 8 CFR 1208.30(g).

(iii) If the alien is found to be an alien described as ineligible for asylum in § 208.13(c)(4), then the asylum officer shall enter a negative credible fear determination with respect to the alien's application for asylum. The Department shall nonetheless place the alien in proceedings under section 240 of the Act for consideration of the alien's claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture, if the alien establishes, respectively, a reasonable fear of persecution or torture. The scope of review shall be limited to a determination of whether the alien is eligible for withholding or deferral of removal, accordingly. However, if an alien fails to establish, during the interview with the asylum officer, a reasonable fear of either persecution or torture, the asylum officer will provide the alien with a written notice of decision, which will be subject to immigration judge review consistent with paragraph (g) of this section, except that the immigration judge will review the reasonable fear findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g) and in 8 CFR 1208.30(g).

* * * * *

## DEPARTMENT OF JUSTICE

Accordingly, for the reasons set forth in the preamble, the Attorney General amends 8 CFR parts 1003 and 1208 as follows:

## PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 4. The authority citation for part 1003 continues to read as follows:

**Authority:** 5 U.S.C. 301; 6 U.S.C 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 5. In § 1003.42, revise paragraph (d) to read as follows:

**§ 1003.42 Review of credible fear determination.**

* * * * *

(d) *Standard of review.* (1) The immigration judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the immigration judge, that the alien could establish eligibility for asylum under section 208 of the Act or withholding under section 241(b)(3) of the Act or withholding or deferral of removal under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(2) If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5)(ii), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) prior to any further review of the asylum officer's negative determination.

(3) If the alien is determined to be an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5)(iii), the immigration judge shall first review de novo the determination that the alien is described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4) prior to any further review of the asylum officer's negative determination.

* * * * *

## PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 6. The authority citation for part 1208 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229.

■ 7. In § 1208.13, add paragraphs (c)(4) and (5) to read as follows:

**§ 1208.13 Establishing asylum eligibility.**

* * * * *

(c) * * *

(4) *Additional limitation on eligibility for asylum.* Notwithstanding the provisions of 8 CFR 208.15, any alien who enters, attempts to enter, or arrives in the United States across the southern land border on or after July 16, 2019, after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, shall be found ineligible for asylum unless:

(i) The alien demonstrates that he or she applied for protection from persecution or torture in at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States and the alien received a final judgment denying the alien protection in such country;

(ii) The alien demonstrates that he or she satisfies the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11; or

(iii) The only country or countries through which the alien transited en route to the United States were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(5) *Non-binding determinations.* Determinations made with respect to paragraph (c)(4)(ii) of this section are not binding on Federal departments or agencies in subsequent determinations of eligibility for T or U nonimmigrant status under section 101(a)(15)(T) or (U) of the Act or for benefits or services under 22 U.S.C. 7105 or 8 U.S.C. 1641(c)(4).

■ 8. In § 1208.30, revise the section heading and paragraph (g)(1) to read as follows:

**§ 1208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act, or who failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States.**

* * * * *

(g) * * *

(1) *Review by immigration judge of a mandatory bar finding.* (i) If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3). If the immigration judge

finds that the alien is not described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), then the immigration judge shall vacate the order of the asylum officer, and DHS may commence removal proceedings under section 240 of the Act. If the immigration judge concurs with the credible fear determination that the alien is an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), the immigration judge will then review the asylum officer's negative decision regarding reasonable fear made under 8 CFR 208.30(e)(5) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g)(2).

(ii) If the alien is determined to be an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4). If the immigration judge finds that the alien is not described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4), then the immigration judge shall vacate the order of the asylum officer, and DHS may commence removal proceedings under section 240 of the Act. If the immigration judge concurs with the credible fear determination that the alien is an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4), the immigration judge will then review the asylum officer's negative decision regarding reasonable fear made under 8 CFR 208.30(e)(5) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g)(2).

* * * * *

Approved:

Dated: July 12, 2019.

**Kevin K. McAleenan,**

*Acting Secretary of Homeland Security.*

Approved:

Dated: July 12, 2019.

**William P. Barr,**

*Attorney General.*

[FR Doc. 2019–15246 Filed 7–15–19; 8:45 am]

**BILLING CODE 4410–30–P; 9111–97–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**[Docket No. FAA–2018–0984; Airspace Docket No. 18–ASW–8]**

**RIN 2120–AA66**

# Expansion of R–3803 Restricted Area Complex; Fort Polk, LA

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

**ACTION:** Final rule.

**SUMMARY:** This action expands the R–3803 restricted area complex in central Louisiana by establishing four new restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F, and makes minor technical amendments to the existing R–3803A and R–3803B legal descriptions for improved operational efficiency and administrative standardization. The restricted area establishments and amendments support U.S. Army Joint Readiness Training Center training requirements at Fort Polk for military units preparing for overseas deployment.

**DATES:** *Effective date:* 0901 UTC, September 13, 2019.

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes restricted area airspace at Fort Polk, LA, to enhance aviation safety and accommodate essential U.S. Army hazardous force-on-force and force-on-target training activities.

### History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2018–0984 in the **Federal Register** (83 FR 60382; November 26, 2018) establishing four new restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F, and making minor technical amendments to the R–3803A and R–3803B descriptions for improved operational efficiency and administrative standardization in support of hazardous U.S. Army force-on-force and force-on-target training activities. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received.

### Discussion of Comments

While supportive of the U.S. Army's need to train as they fight, the first commenter noted that modern general aviation aircraft have longer flight endurance today, making timely NOTAM publication of restricted area activations necessary for effective flight planning. To overcome the possibility of the restricted areas being activated with no advance notification, the commenter recommended adding ''at least 4 hours in advance'' to the ''By NOTAM'' time of designation proposed for the R–3803A, R–3803C, and R–3803D restricted areas. Additionally, the commenter requested the effective date of the proposed restricted areas, if approved, coincide with the next update of the Houston Sectional Aeronautical Chart.

It is FAA policy that when NOTAMs are issued to activate special use airspace, the NOTAMs should be issued as far in advance as feasible to ensure the widest dissemination of the information to airspace users. The FAA acknowledges that the addition of the ''at least 4 hours in advance'' provision to the proposed ''By NOTAM'' time of designation, as recommended by the commenter, would contribute to ensuring the widest dissemination of the restricted areas being activated to effected airspace users. As such, the FAA adopts the commenter's recommendation to amend the time of designation for R–3803A, R–3803C, and R–3803D to reflect ''By NOTAM issued at least 4 hours in advance.''

Additionally, the establishment of R–3803C, R–3803D, R–3803E, and R–3803F, and the minor technical amendments to the existing R–3803A and R–3803B legal descriptions are being made effective to coincide with the upcoming Houston Sectional Aeronautical Chart date.

The second commenter raised aerial access concerns of the area in which the new restricted areas were proposed to be established. The commenter stated

restriction of the airspace would require many commercial forestry activities on private lands, traditionally accomplished through aerial application, to be done via ground application which would have a detrimental effect on a purported endangered Pine Snake habitat and render land owners unable to exercise their ownership or conduct timber management with traditional, cost effective methods. The commenter added that without aerial surveillance and fire suppression flights, timber and economic losses to fire, insect, and disease would increase. The commenter also argued that closure of the restricted area airspace would have an economic impact on Central and Southwest Louisiana by limiting commercial air traffic into Alexandria International Airport, LA.

The FAA considered the commenter's concerns and has determined aerial access to the private properties underlying the new restricted areas is unaffected by the establishment of the restricted areas. When the new restricted areas are active, aerial access to the underlying privately owned properties is provided by a 1,200-foot above ground level (AGL) exclusion area incorporated within restricted area R–3803D. The FAA believes this 1,200-foot AGL exclusion is adequate for non-participating aviation to perform commercial forestry activities, wildfire surveillance and suppression flights, and insect infestation detection and aerial spraying on the private lands noted by the commenters. This continued aerial access also mitigates the commenter's concerns associated with a detrimental effect on an endangered Pine Snake habitat, as well as land owners' abilities to exercise their land ownership or timber management actions with traditional, cost effective methods.

The remaining land that underlies restricted areas R–3803C and R–3803D is owned by the U.S. Army. Aerial access to that land, when the restricted areas are active, will be provided using the same processes and procedures that are in place today for accessing the land under the existing R–3803A.

Lastly, as part of the aeronautical study conducted by Houston Air Route Traffic Control Center (ARTCC), the FAA analyzed the impact to commercial air traffic into Alexandria International Airport, LA, as noted by the commenter. Houston ARTCC acknowledged instrument arrival and departure procedures into the Houston Terminal Area and Alexandria International Airport would be impacted slightly. However, the altitudes and times of use for the restricted areas will greatly mitigate any impact on these procedures. Additionally, the procedures are seldom used and if required the aircraft can be positively controlled away from the procedural routings, so the impact to these areas will be negligible. Houston ARTCC ultimately recommended approval and deemed the establishment of the four new restricted areas would not have an adverse impact on the commercial air traffic into Alexandria International Airport.

**Military Operations Areas (MOA)**

In the NPRM, the FAA acknowledged that the proposed R–3803C and R–3803D restricted areas, if established, would be designated within the existing Warrior 1 Low and Warrior 1 High Military Operations Areas (MOAs). To address potential airspace issues and confusion created if all special use airspace (SUA) areas were active at the same time, the FAA stated it would amend the legal descriptions of both MOAs to exclude that airspace within R–3803C and R–3803D when the restricted areas were activated.

MOAs are established to separate or segregate non-hazardous military flight activities from aircraft operating in accordance with instrument flight rules (IFR) and to advise pilots flying under visual flight rules (VFR) where these activities are conducted. IFR aircraft may be routed through an active MOA only by agreement with the using agency and only when air traffic control can provide approved separation from the MOA activity. VFR pilots are not restricted from flying in an active MOA but are advised to exercise caution while doing so. MOAs are nonregulatory airspace areas that are established or amended administratively and published in the National Flight Data Digest (NFDD) rather than through rulemaking procedures. When a nonrulemaking action is ancillary to a rulemaking action, FAA procedures allow for the nonrulemaking changes to be included in the rulemaking action. Since amendments to the Warrior 1 Low and Warrior 1 High MOAs descriptions are ancillary to the establishment of R–3803C and R–3803D, the MOA changes are addressed in this rule as well as being published in the NFDD.

The FAA circularized a proposal to make editorial amendments to the Warrior 1 Low and Warrior 1 High MOAs boundary descriptions, contingent upon R–3803C and R–3803D being established, to add language that excluded that airspace within R–3803C and R–3803D when the restricted areas were activated. Interested parties were invited to participate in this proposed nonrulemaking action by submitting written comments on the proposal. Two comments were received.

Both commenters raised the same concerns over restrictions to aerial access for forest landowners, loggers, and forest industry stakeholders. Specifically, the commenters argued the proposed MOA amendments restricted the ability to aerially detect wildfires, inspect for insect infestations, and treat forest lands with chemicals and fertilizers in the impact area. They contended the added costs of conducting forest management practices from only the ground would add substantial costs to their operations and be less effective, and that the economic loss caused by the MOA proposal to forestry, loggers, and the forest industry as well as revenue to the local and state economy would be considerable.

In response, the FAA offers that the external boundaries, altitudes, times of use, or activities to be conducted within the Warrior MOA complex remain the same with the inclusion of the proposed restricted area exclusion language amendments. Aerial access for forest landowners, loggers, and forest industry stakeholders within the amended MOAs would be unchanged when the new restricted areas are not activated. When the new restricted areas are activated, aerial access to the private properties would be provided by the 1,200-foot AGL exclusion area within R–3803D and support the continued aviation activities described by the commenters. For aerial access to the U.S. Army owned property underlying R–3803C and the portion of R–3803D that extends upward from the surface, it will be provided using the same processes and procedures that are in place today for nonparticipant aircraft to access the existing R–3803A. Since aerial access to the private and U.S. Army owned lands falling under the amended MOAs, R–3803C, and R–3803D will continue to be available for forest landowners, loggers, and forest industry stakeholders, the aerial forest management practices noted by the commenters will not be impacted and the economic loss or revenue impact concerns noted by the commenters mitigated.

As a result, the Warrior 1 Low and Warrior 1 High MOAs boundary descriptions are being amended to include language that excludes that airspace within R–3803C and R–3803D when the restricted areas are activated. These editorial amendments overcome any potential airspace confusion or conflict resulting from the overlapping restricted areas and MOAs being activated at the same time. Additionally,

the amendments help inform nonparticipants when portions of the MOAs are not available due to hazardous activities being conducted in the overlapping restricted areas. The amended boundary descriptions for the MOAs will be published in the NFDD; the rest of the MOAs legal descriptions remain unchanged.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by establishing four new restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F, located south-southeast of the existing R–3803A and R–3803B restricted areas, supporting the Joint Readiness Training Center at Fort Polk, LA. The new restricted areas will support the U.S. Army conducting realistic force-on-force and force-on-target training employing longer-range surface-to-surface and air-to-surface munitions.

Of the new restricted areas, R–3803C and R–3803D will extend upward from the surface to but not including FL 180. Stacked above R–3803C, R–3803E will be established extending upward from FL 180 to but not including FL 350. Similarly, stacked above R–3803D, R–3803F will be established extending upward from FL 180 to but not including FL 350. The boundaries of the R–3803C and R–3803E restricted areas will match, as will the boundaries of the R–3803D and R–3803F restricted areas. However, there is an airspace cutout included in the R–3803D boundary description, extending upward from the surface to 1,200 feet AGL, to allow aerial access to the private land under the restricted area that the Army does not own or control.

Restricted areas R–3803C and R–3803D will be activated by NOTAM issued at least 4 hours in advance, with an anticipated usage of 18 hours per day approximately 320 days per year. The higher strata restricted areas, R–3803E and R–3803F, will be activated by NOTAM issued at least 24 hours in advance, with an anticipated usage of 8 hours per day approximately 20 days per year.

Lastly, a number of minor editorial and technical amendments to the existing R–3803A and R–3803B restricted area legal descriptions are being made. They include:

- The designated altitudes for R–3803A is changed from ''Surface to FL 180'' to ''Surface to but not including FL 180.''
- The designated altitudes for R–3803B is changed from ''FL 180 up to but not including FL 350'' to ''FL 180 to but not including FL 350.'' This amendment was noted in the NPRM preamble to match the designated altitudes of the upper proposed restricted areas, listed as R–3803C and R–3803D in error. The correct upper proposed restricted areas that should have been listed are R–3803E and R–3803F. The regulatory text in the NPRM for the R–3803B, R–3803E, and R–3803F designated altitudes all matched with the correct proposed amendment information.
- The time of designation for R–3803A is changed from ''Continuous'' to ''By NOTAM issued at least 4 hours in advance.''
- The time of designation for R–3803B is changed from ''As activated by NOTAM issued at least 24 hours in advance'' to ''By NOTAM issued at least 24 hours in advance.''
- The using agency for R–3803A and R–3803B is changed from ''Commanding General, Fort Polk, LA'' to ''U.S. Army, Joint Readiness Training Center, Fort Polk, LA.''

The new restricted areas R–3803C and R–3803D are designated within the existing Warrior 1 Low and Warrior 1 High Military Operations Areas (MOAs). To address potential airspace issues and confusion created when the restricted areas and MOAs are active at the same time, the FAA is taking action to amend both MOA legal descriptions to exclude that airspace within R–3803C and R–3803D when the restricted areas are activated.

**Regulatory Notices and Analyses**

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

**Environmental Review**

The FAA has determined that this action of establishing four restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F, located south southeast of the R–3803 restricted area complex at Fort Polk, LA, qualifies for FAA adoption in accordance with FAA Order 1050.1F, paragraph 8–2, *Adoption of Other Agencies' National Environmental Policy Act Documents,* and FAA Order 7400.2M, paragraph 32–2–3 (Special Use Airspace). After conducting an independent review and evaluation of the U.S. Army's Joint Readiness Training Center, Fort Polk, Louisiana, Final Environmental Assessment for the Expansion Of Restricted Area Complex Airspace R–3803 (March 2019) and Finding Of No Significant Impact, the FAA has determined that the Army's EA and its supporting documentation adequately assesses and discloses the environmental impacts of the proposed action, including establishment of restricted areas R–3803C, R–3803D, R–3803E, and R–3803F. Based on the evaluation in the Army's EA, the FAA, as a Cooperating Agency, concluded that the Army's EA qualifies for adoption by FAA, and that the FAA's adoption of the Army's EA for the expansion of the R–3803 restricted area complex in central Louisiana by establishing four new restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F is authorized in accordance with 40 CFR 1506.3, *Adoption.* Accordingly, FAA adopts the Army's EA and takes full responsibility for the scope and content that addresses the FAA's actions associated with the establishment of the additional restricted areas.

**List of Subjects in 14 CFR Part 73**

Airspace, Prohibited areas, Restricted areas.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

**§ 73.38 Louisiana [Amended]**

■ 2. § 73.38 is amended as follows:

**R–3803A Fort Polk, LA [Amended]**

*Boundaries.* Beginning at lat. 31°23′37″ N, long. 93°09′58″ W; to lat. 31°23′13″ N, long. 93°09′49″ W; to lat. 31°22′01″ N, long. 93°10′06″ W; to lat. 31°19′17″ N, long. 93°11′11″ W; to lat. 31°19′17″ N, long. 93°20′16″ W; to lat. 31°24′31″ N, long. 93°20′16″ W; to lat. 31°24′31″ N, long. 93°16′43″ W; to lat. 31°23′36″ N, long. 93°13′25″ W; to the point of beginning.

*Designated altitudes.* Surface to but not including FL 180.

*Time of designation.* By NOTAM issued at least 4 hours in advance.

*Controlling agency.* FAA, Houston ARTCC.

*Using agency.* U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

**R–3803B Fort Polk, LA [Amended]**

*Boundaries.* Beginning at lat. 31°23′37″ N, long. 93°09′58″ W; to lat. 31°23′13″ N, long. 93°09′49″ W; to lat. 31°22′01″ N, long. 93°10′06″ W; to lat. 31°19′17″ N, long. 93°11′11″ W; to lat. 31°19′17″ N, long. 93°20′16″ W; to lat. 31°24′31″ N, long. 93°20′16″ W; to lat. 31°24′31″ N, long. 93°16′43″ W; to lat. 31°23′36″ N, long. 93°13′25″ W; to the point of beginning.

*Designated altitudes.* FL 180 to but not including FL 350.

*Time of designation.* By NOTAM issued at least 24 hours in advance.

*Controlling agency.* FAA, Houston ARTCC.

*Using agency.* U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

**R–3803C Fort Polk, LA [New]**

*Boundaries.* Beginning at lat. 31°19′17″ N, long. 93°10′31″ W; to lat. 31°17′39″ N, long. 93°11′07″ W; to lat. 31°14′25″ N, long. 93°12′17″ W; to lat. 31°14′25″ N, long. 93°14′40″ W; to lat. 31°15′32″ N, long. 93°14′40″ W; to lat. 31°15′32″ N, long. 93°17′00″ W; to lat. 31°19′17″ N, long. 93°17′00″ W; to the point of beginning.

*Designated altitudes.* Surface to but not including FL 180.

*Time of designation.* By NOTAM issued at least 4 hours in advance.

*Controlling agency.* FAA, Houston ARTCC.

*Using agency.* U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

**R–3803D Fort Polk, LA [New]**

*Boundaries.* Beginning at lat. 31°19′17″ N, long. 93°03′29″ W; to lat. 31°14′53″ N, long. 93°03′30″ W; to lat. 31°14′52″ N, long. 93°08′52″ W; to lat. 31°14′51″ N, long. 93°10′07″ W; to lat. 31°14′25″ N, long. 93°10′06″ W; to lat. 31°14′25″ N, long. 93°12′17″ W; to lat. 31°17′39″ N, long. 93°11′07″ W; to lat. 31°19′17″ N, long. 93°10′31″ W; to the point of beginning, excluding the airspace area from the surface to and including 1,200 feet AGL beginning at lat. 31°14′52″ N, long. 93°08′52″ W; at lat. 31°14′51″ N, long. 93°10′07″ W; at lat. 31°14′25″ N, long. 93°10′06″ W; at lat. 31°14′25″ N, long. 93°12′17″ W; at lat. 31°17′39″ N, long. 93°11′07″ W; at lat. 31°17′04″ N, long. 93°10′22″ W; at lat. 31°16′11″ N, long. 93°10′22″ W; to the point of beginning of the excluded area.

*Designated altitudes.* Surface to but not including FL 180.

*Time of designation.* By NOTAM issued at least 4 hours in advance.

*Controlling agency.* FAA, Houston ARTCC.

*Using agency.* U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

**R–3803E Fort Polk, LA [New]**

*Boundaries.* Beginning at lat. 31°19′17″ N, long. 93°10′31″ W; to lat. 31°17′39″ N, long. 93°11′07″ W; to lat. 31°14′25″ N, long. 93°12′17″ W; to lat. 31°14′25″ N, long. 93°14′40″ W; to lat. 31°15′32″ N, long. 93°14′40″ W; to lat. 31°15′32″ N, long. 93°17′00″ W; to lat. 31°19′17″ N, long. 93°17′00″ W; to the point of beginning.

*Designated altitudes.* FL 180 to but not including FL 350.

*Time of designation.* By NOTAM issued at least 24 hours in advance.

*Controlling agency.* FAA, Houston ARTCC.

*Using agency.* U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

**R–3803F Fort Polk, LA [New]**

*Boundaries.* Beginning at lat. 31°19′17″ N, long. 93°03′29″ W; to lat. 31°14′53″ N, long. 93°03′30″ W; to lat. 31°14′52″ N, long. 93°08′52″ W; to lat. 31°14′51″ N, long. 93°10′07″ W; to lat. 31°14′25″ N, long. 93°10′06″ W; to lat. 31°14′25″ N, long. 93°12′17″ W; to lat. 31°17′39″ N, long. 93°11′07″ W; to lat. 31°19′17″ N, long. 93°10′31″ W; to the point of beginning.

*Designated altitudes.* FL 180 to but not including FL 350.

*Time of designation.* By NOTAM issued at least 24 hours in advance.

*Controlling agency.* FAA, Houston ARTCC.

*Using agency.* U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

Issued in Washington, DC, on July 10, 2019.

**Rodger A. Dean Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2019–15119 Filed 7–15–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Part 335

**[Docket No. 170922927–8683–01]**

**RIN 0625–AB13**

## Imports of Certain Worsted Wool Fabric: Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000: Removal of Regulations

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The International Trade Administration of the Department of Commerce is removing an obsolete and unnecessary regulation on licenses for the allocation of tariff rate quotas for the import of certain worsted wool fabrics. The tariff rate quota authority administered by the International Trade Administration has expired, making the implementing regulations obsolete and unnecessary.

**DATES:** This rule is effective July 16, 2019.

**FOR FURTHER INFORMATION CONTACT:** Daniel Hylton, Office of the General Counsel, U.S. Department of Commerce, 1401 Constitution Avenue NW, Mail Stop 5875, Washington, DC 20230; telephone: (202) 482–0937, *occic@doc.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 501(e) of the Trade and Development Act of 2000, Public Law 106–200, required the President to fairly allocate tariff rate quotas on the import of certain worsted wool fabrics established under Sections 501(a) and (b) of the Act. Section 504(b) authorized the President to modify the limitations on worsted wool fabric imports under the tariff rate quotas. In Presidential Proclamation 7383 of December 1, 2000, the President delegated to the Secretary of Commerce the authority to allocate the quantity of imports under the tariff rate quotas; to annually consider requests from domestic manufacturers of worsted wool apparel to modify the limitation on the quantity of worsted wool fabrics that may be imported under the tariff rate quotas; to determine whether the limitations on the quantity of imports under the tariff rate quotas should be modified and recommend to the President that appropriate modifications be made; and to issue regulations to implement the relevant provisions of the Act. Pursuant to that delegation, the Department issued the regulations at 15 CFR part 335 and revised those regulations in 2005 (70 FR 24941; May 12, 2005) to implement amendments to the program under Title IV (entitled the ''Wool Suit and Textile Trade Extension Act of 2004'') of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429). Section 325(a) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Division C of Pub. L. 110–343, extended the authority for the tariff rate quota program until December 31, 2014, at which time the program expired.

### Classification

This final rule was drafted in accordance with Executive Orders 12866, 13563, and 13771. OMB has determined that this rule is not significant for purposes of Executive Order 12866. This final rule is a deregulatory action under Executive Order 13771.

*Administrative Procedure Act and Regulatory Flexibility Act*

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary. This rule removes obsolete regulations implementing the sections

of Title V of the Trade and Development Act of 2000, as amended, that are no longer in effect. Therefore, public comment would serve no purpose and is unnecessary. There is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. This rule does not alter the rights or responsibilities of any party, and delaying its implementation would serve no purpose.

Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

*Congressional Review Act*

This final rule is not major under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

*Executive Order No. 13132*

This final rule does not contain policies that have federalism implications.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA'') requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. This final rule does not require the collection of any information.

**List of Subjects in 15 CFR Part 335**

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Textiles.

Dated: July 3, 2019.

**Maria D'Andrea-Yothers,**

*Director, Office of Textiles and Apparel, Industry and Analysis, International Trade Administration, U.S. Department of Commerce.*

## PART 335—[REMOVED AND RESERVED]

■ For the reasons discussed in the preamble, and under the authority of 5 U.S.C. 301, we remove and reserve part 335 of title 15 of the Code of Federal Regulations.

[FR Doc. 2019–14551 Filed 7–15–19; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### 33 CFR Part 334

**[COE–2018–0007]**

## Atlantic Ocean South of Entrance to Chesapeake Bay; Firing Range

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Corps of Engineers is amending an existing permanent danger zone in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay off of the coast of Virginia. For decades, the Dam Neck Surface Danger Zone (SDZ) served as a firing range for gunnery training at what is now Naval Air Station Oceana's Dam Neck Annex. While the Navy continues to use the SDZ for training, fixed-mount gunnery operations have not been conducted there for over 30 years. This amendment is necessary to accurately identify the hazards associated with training and mission operations to protect the public. This amendment identifies the area within the current danger zone boundary where live fire exercises are no longer conducted and no restriction to surface navigation exists. In addition, the amendment removes references to live fire range conditions and safety procedures since shore-to-sea gunnery operations are no longer conducted.

**DATES:** Effective: August 15, 2019.

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW–CO–R (David Olson), 441 G Street NW, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757–201–7122.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the February 13, 2019, edition of the **Federal Register** (84 FR 3739) and the *regulations.gov* docket number was COE–2018–0007. No comments were received in response to the proposed rule.

In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending 33 CFR 334.390 to amend this danger zone in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay adjacent to Naval Air Station Oceana's Dam Neck Annex in Virginia Beach, Virginia.

**Procedural Requirements**

*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. For the reasons stated below, this final rule is not a ''significant regulatory action'' under Executive Order 12866. Accordingly, this final 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.

The Corps determined this final rule is not a significant regulatory action because both the area of existing danger zone subject to live firing exercises and the navigation restrictions are being decreased. This final rule allows any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the small arms range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering. This rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

*b. Impact on Small Entities.*

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments).

The Corps certifies that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the danger zone may be small entities, this rule would not have a significant economic impact on any vessel owner or operator because it identifies the portion of the danger zone that is

subject to live firing exercises and navigation restrictions, and allows any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the small arms range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering. In addition, danger zone is necessary to protect public from hazards associated with training and mission operations. Small entities can also utilize navigable waters outside of the danger zone when the small arms range is in use. The Corps has determined that the modified danger zone will have practically no economic impact on the public, including any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this amendment of the existing danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

*c. Review Under the National Environmental Policy Act*

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

*d. Unfunded Mandates Act*

This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. I have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

*e. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. We will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.390 to read as follows:

**§ 334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.**

(a) *The danger zone.* (1) A section extending seaward for a distance of 12,000 yards between two radial lines bearing 030° True and 083° True, respectively, from a point on shore at latitude 36°46′48″ N, longitude 75°57′24″ W; and an adjacent sector extending seaward for a distance of 15 nautical miles between two radial lines bearing 083° True and 150° True, respectively, from the same shore position. The datum for these coordinates is WGS–1984.

(b) *The regulation.* (1) To accommodate ingress and egress within the southern approach to the Chesapeake Bay Federal navigation channels, no live fire exercise will take place within the area northeast of, and defined by a line intersecting points latitude 36°47′59″ N, longitude 75°46′05″ W and latitude 36°44′25″ N, longitude 75°38′57″ W, and this area is open to unrestricted surface navigation.

(2) Within the remainder of the danger zone vessels shall proceed through the area with caution and shall remain therein no longer than necessary for the purpose of transit.

(3) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations on the beach which are visible from the water a minimum distance of four (4) nautical miles.

(4) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(5) Lookout posts will be manned by the activity or agency operating the firing range at the Naval Air Station Oceana, Dam Neck Annex, in Virginia Beach, Virginia. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(6) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(7) Throughout the entire danger zone anchoring, dredging, trawling and any bottom disturbing activities should be conducted with caution due to the potential of unexploded ordnance (UXO) and other munitions and explosives of concern (MEC) on the bottom.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Naval Air Force Atlantic, U.S. Fleet Forces Command, Norfolk, Virginia, and such agencies as he or she may designate.

Dated: July 11, 2019.

**Thomas P. Smith, P.E.,**

*Chief, Operations and Regulatory Division, Directorate of Civil Works.*

[FR Doc. 2019–15086 Filed 7–15–19; 8:45 am]

**BILLING CODE 3720–58–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0422; FRL–9996–43–Region 4]**

### Air Plan Approval; NC; Emission Control Standards, Open Burning, and Miscellaneous Revisions

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve portions of a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (formerly the North Carolina Department of Environment and Natural Resources (NCDENR)), Division of Air Quality, on January 31, 2008. The revision includes changes to emission control standards and open burning regulations. The changes are part of North Carolina's strategy to meet and

maintain the national ambient air quality standards (NAAQS). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** This rule is effective August 15, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2017–0422. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division (formerly the Air, Pesticides and Toxics Management Division), U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Andres Febres, 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) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On January 31, 2008, the State of North Carolina, through NCDENR,[1] submitted changes to the North Carolina SIP for EPA approval. EPA is taking final action to approve changes to the following regulations under 15A North Carolina Administrative Code (NCAC) 02D: Section .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions;* Section .0540, *Particulates From Fugitive Non-Process Dust Emission Sources;* and Section .1907, *Multiple Violations Arising From a Single Episode.*[2] These changes are a part of North Carolina's strategy to attain and maintain the NAAQS and are being approved pursuant to section 110 of the CAA. EPA has taken, will take, or, for various reasons, will not take separate action on all other changes submitted on January 31, 2008.[3]

The revisions that are the subject of this final action make changes to emission control standard regulations under Subchapter 2D of the North Carolina SIP. These changes revise the applicability of nitrogen dioxide ($NO_2$) and nitrogen oxides emissions standards to nitric acid plants; amend definitions and expand the applicability of provisions related to fugitive dust emissions, including renaming the rule to eliminate the word ''non-process''; and add a new open burning rule for multiple violations that can occur from a single open burning event. The changes either do not interfere with attainment and maintenance of the NAAQS or they have the effect of strengthening the North Carolina SIP. In a notice of proposed rulemaking (NPRM) published on March 11, 2019 (84 FR 8654), EPA proposed to approve the aforementioned revisions to the North Carolina SIP. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before April 10, 2019. EPA received one comment on the proposed action, but it is not germane to the proposed action. That comment is discussed below.

## II. Response to Comments

EPA received one comment, which addresses portions of North Carolina's submittal on which EPA is not acting in this rulemaking. The comment concerns changes to 15A NCAC 02D .0521 and .1201, as well as the adoption of 15A NCAC 02D .1211. As explained herein and in the NPRM, s*ee* 84 FR at 8655 n.3, those NCAC provisions are not the subject of this rulemaking, and EPA is not taking action on changes to them. Therefore, the comment is not relevant to this action.

## III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of state regulations under Subchapter 2D Air Pollution Control Requirements, Section .0519, *Control of Nitrogen Dioxide and Nitrogen Oxides Emissions;* and Section .1907, *Multiple Violations Arising from a Single Episode,* which have a state effective date of July 1, 2007; as well as Section .0540, *Particulates From Fugitive Dust Emission Sources,* which has as effective date of August 1, 2007. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

## IV. Final Action

For the reasons described above, EPA is taking final action to approve the aforementioned changes to the North Carolina SIP submitted by the State of North Carolina on January 31, 2008, pursuant to CAA section 110 because these changes are consistent with the CAA. Changes to the other sections in these submissions have been or will be processed in a separate action, as appropriate, for approval into the North Carolina SIP.

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

[1] NCDENR is now the North Carolina Department of Environmental Quality.

[2] In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as ''Subchapter 2D Air Pollution Control Requirements.''

[3] On February 5, 2015 (80 FR 6455), EPA took final action on 2D Section .1004. On July 18, 2017 (82 FR 32767), EPA took direct final action on 2D Sections .1901, .1902 and .1903. EPA will be taking separate action on 15A NCAC Sections 2D .1904 and 2Q .0102. EPA is not taking action on 2D Sections .0516 and .0521, because the changes to these rules reference incinerator rules under CAA sections 111(d) and 129 and 40 CFR part 60 and are not a part of the federally-approved SIP. EPA is not taking action on changes to 2Q Section .0506 because the proposed changes reference a regulation not approved into the SIP and which is being repealed by North Carolina. Lastly, EPA is not taking action on changes to 2D Sections .0524, .0960, .1201, .1202, .1208, .1211, and .2303 because the State withdrew these regulations from its January 31, 2008, submittal.

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

the CAA. 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 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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

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

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

Dated: June 26, 2019.

**Mary S. Walker,**

*Regional Administrator, Region 4.*

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 II—North Carolina

■ 2. In § 52.1770, the table in paragraph (c)(1) is amended under Subchapter 2D Air Pollution Control Requirements by:
■ a. Revising the entries for ''Section .0519'' and ''Section .0540''; and
■ b. Adding an entry for ''Section .1907'' in numerical order.

The revisions and addition read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) * * *

(1) EPA Approved North Carolina Regulations

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Subchapter 2D Air Pollution Control Requirements** | | | | |
| * | * | * | * | * |
| **Section .0500 Emission Control Standards** | | | | |
| * | * | * | * | * |
| Section .0519 ..... | Control of Nitrogen Dioxide and Nitrogen Oxides Emissions. | 7/1/2007 | 7/16/2019 [Insert citation of publication]. | |
| * | * | * | * | * |
| Section .0540 ..... | Particulates from Fugitive Dust Emission Sources. | 8/1/2007 | 7/16/2019 [Insert citation of publication]. | |

(1) EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| **Section .1900 Open Burning** | | | | |
| * | * | * | * | * |
| Section .1907 ..... | Multiple Violations Arising from a Single Episode. | 7/1/2007 | 7/16/2019 [Insert citation of publication]. | |
| * | * | * | * | * |

* * * * *

[FR Doc. 2019–14879 Filed 7–15–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

**[EPA–R09–OAR–2018–0366; FRL–9994–98–Region 9]**

### Outer Continental Shelf Air Regulations; Consistency Update for California

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing the approval of a local rule and the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on June 21, 2018. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (''Santa Barbara County APCD'' or ''the District'') is the designated COA. The intended effect of approving the local rule and updating the OCS requirements for the Santa Barbara County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed in this document will be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the OCS air regulations.

**DATES:** This rule is effective on August 15, 2019. The incorporation by reference of a certain publication listed in this rule is approved by the Director of the Federal Register as of August 15, 2019.

**ADDRESSES:** The EPA has established docket number EPA–R09–OAR–2018–0366 for this action. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *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:** Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125, *vineyard.christine@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms ''we,'' ''us,'' or ''our'' refer to the EPA.

*Organization of this document:* The following outline is provided to aid in locating information in this preamble.



### I. Proposed Action

On June 21, 2018 (83 FR 28795), the EPA proposed to approve Santa Barbara County APCD Rule 360—Boilers, Water Heaters, and Process Heaters (0.075–2 MMBtu/hr.) (Revised 03/15/18) into the Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources. The requirements are incorporated into the OCS Air Regulations at 40 CFR part 55. As required under 40 CFR 55.1 and 55.12(d)(2), we evaluated Rule 360 to ensure that it is rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that it is not designed expressly to prevent exploration and development of the OCS and that it is applicable to OCS sources. We also evaluated the rule to ensure that it is not arbitrary or capricious, as required under 40 CFR 55.12(e).

As explained in our proposal, section 328(a) of the Act requires that the EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits the EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents the EPA from making substantive changes to the requirements it incorporates. As a result, the EPA may be incorporating rules into part 55 that do not conform to all of the EPA's state implementation plan (SIP) guidance documents or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by the EPA for inclusion in the SIP.

### II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on the proposed action.

### III. EPA Action

No comments were submitted. Therefore, as authorized in section

328(a)(1) of the Act, 42 U.S.C. 7627, the EPA is taking final action to approve Santa Barbara County APCD Rule 360—Boilers, Water Heaters, and Process Heaters (0.075–2 MMBtu/hr.) (Revised 03/15/18) for inclusion in the compilation of Santa Barbara County APCD requirements applicable to OCS sources.

Also, the EPA is taking final action to update the incorporation by reference of the compilation of EPA approved OCS source provisions for the Santa Barbara County APCD. The ''Santa Barbara County APCD Requirements Applicable to OCS Sources,'' dated April 2019, replaces the compilation previously incorporated into 40 CFR part 55 for the Santa Barbara County APCD. *See* 82 FR 43491, September 18, 2017.

## IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ''Santa Barbara County APCD Requirements Applicable to OCS Sources,'' dated April 2019, as described in the amendments to 40 CFR part 55 set forth below. The EPA has made, and will continue to make, this documents available through *www.regulations.gov* and at the EPA Region IX 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 Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into Part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), 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, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* 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. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. OMB approved EPA Information Collection Request No. 1601.08 on September 18, 2017. The current approval expires September 30, 2020. The total burden for collection of information under 40 CFR part 55 is estimated to be 27,018 hours per year, using the definition of burden provided in 5 CFR 1320.3(b). 82 FR 21811, 21812 (May 10, 2017).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

## List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: May 29, 2019.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

40 CFR part 55 is amended as follows:

## PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for Part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(F) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by State.**

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* April 2019.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (b)(6) under the heading ''California'' to read as follows:

**Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference into Part 55, by State**

* * * * *

California

* * * * *

(b) * * *

(6) The following requirements are contained in Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources, April 2019:

Rule 102 Definitions (Revised 08/25/16)
Rule 103 Severability (Adopted 10/23/78)
Rule 105 Applicability (Revised 08/25/16)
Rule 107 Emergencies (Adopted 04/19/01)
Rule 201 Permits Required (Revised 06/19/08)
Rule 202 Exemptions to Rule 201 (Revised 08/25/16)
Rule 203 Transfer (Revised 04/17/97)
Rule 204 Applications (Revised 08/25/16)
Rule 205 Standards for Granting Permits (Revised 04/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Revised 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Revised 03/17/05)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Revised 6/1981)
Rule 303 Nuisance (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/02/90)
Rule 316 Storage and Transfer of Gasoline (Revised 01/15/09)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Revised 06/21/12)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Revised 11/15/01)
Rule 323.1 Architectural Coatings (Adopted 06/19/14, Effective 01/01/15)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Revised 07/19/01)
Rule 326 Storage of Reactive Organic Compound Liquids (Revised 01/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Revised 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Metal Parts and Products (Revised 06/21/12)
Rule 331 Fugitive Emissions Inspection and Maintenance (Revised 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 06/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 06/19/08)
Rule 342 Control of Oxides of Nitrogen (NOx) from Boilers, Steam Generators and Process Heaters) (Revised 04/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Revised 01/18/01)
Rule 349 Polyester Resin Operations (Revised 06/21/12)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Revised 10/20/11)
Rule 353 Adhesives and Sealants (Revised 06/21/12)
Rule 359 Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360 Boilers, Water Heaters, and Process Heaters (0.075–2 MMBtu/hr.) (Revised 03/15/18)
Rule 361 Small Boilers, Steam Generators, and Process Heaters (Adopted 01/17/08)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Revised 01/20/11)
Rule 505 Breakdown Conditions Sections A., B.1, and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 06/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review—Definitions and General Requirements (Revised 08/25/16)
Rule 802 New Source Review (Revised 08/25/16)
Rule 804 Emission Offsets (Revised 08/25/16)
Rule 805 Air Quality Impact Analysis, Modeling, Monitoring, and Air Quality Increment Consumption (Revised 08/25/16)
Rule 806 Emission Reduction Credits (Revised 08/25/16)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 809 Federal Minor Source New Source Review (Revised 08/25/16)
Rule 810 Federal Prevention of Significant Deterioration (PSD) (Revised 06/20/13)
Rule 1301 Part 70 Operating Permits—General Information (Revised 08/25/16)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Revised 01/18/01)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Revised 01/18/01)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

* * * * *

[FR Doc. 2019–14985 Filed 7–15–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[EPA–R03–OAR–2018–0387; FRL–9996–72–Region 3]**

### Approval of the Redesignation Request for the Washington, DC-MD-VA 2008 8-Hour Ozone National Ambient Air Quality Standard Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the request from the District of Columbia (the District) to redesignate to attainment their respective portion of the Washington, DC-MD-VA nonattainment area (hereafter ''the Washington Area'' or ''the Area'') for the 2008 8-hour ozone national ambient air quality standard (NAAQS or standard) (also referred to as the ''2008 ozone NAAQS'') as the District's portion of the Area meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is therefore redesignating the District of Columbia to attainment for the 2008 ozone NAAQS in accordance with the CAA.

**DATES:** This final rule is effective on August 15, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0387. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *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:** Sara Calcinore, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2043. Ms. Calcinore can also be reached via electronic mail at *calcinore.sara@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, the Washington Area was designated as marginal nonattainment for the 2008 ozone NAAQS. At the time of its designation, the Washington Area consisted of the Counties of Calvert, Charles, Frederick, Montgomery, and Prince George's in Maryland, the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia, and the District of Columbia. *See* 40 CFR 81.309, 81.321, and 81.347.[1]

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the State containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.[2]

On March 12, 2018, February 5, 2018, and January 3, 2018, the District, Maryland, and Virginia, respectively, formally submitted requests to redesignate their portions of the Washington Area from marginal nonattainment to attainment for the 2008 ozone NAAQS. Concurrently, the District, Maryland, and Virginia formally submitted, as revisions to their respective SIPs, a joint maintenance plan for the Washington Area prepared by the Metropolitan Washington Council of Governments (MWCOG) that demonstrates maintenance of the 2008 ozone NAAQS through 2030 in the Washington Area. On April 15, 2019, EPA approved, as revisions to the District's, Maryland's, and Virginia's SIPs, the joint maintenance plan for the Washington Area. 84 FR 15108. In the April 15, 2019 action, EPA also approved Maryland and Virginia's requests to redesignate to attainment their portions of the Washington Area from marginal nonattainment to attainment of the 2008 ozone NAAQS.[3] At the time, EPA did not approve the District's request to redesignate to attainment their portion of the Washington Area for the 2008 ozone NAAQS.

On May 21, 2019 (84 FR 22996), EPA published a notice of proposed rulemaking (NPRM) for the District. In the NPRM, EPA proposed approval of the District's request to redesignate to attainment their portion of the Washington Area, pursuant to CAA section 107(d)(3).

## II. Summary of SIP Revision and EPA Analysis

EPA reviewed the District's redesignation request and found in the May 21, 2019 NPRM that the District's portion of the Washington Area has satisfied the CAA section 107(d)(3)(E) requirements for redesignation for the 2008 ozone NAAQS. EPA's rationale for this action can be found in the May 21, 2019 NPRM. EPA received one adverse comment regarding the proposal, and, as discussed below, we conclude that the air quality monitoring data supports a finding that the Washington area is attaining the 2008 ozone NAAQS based on the 2015–2017 design value, and that preliminary data from 2016–2018 further supports that conclusion. Therefore, EPA is redesignating the District's portion of the Washington Area to attainment for the 2008 ozone NAAQS.

## III. Public Comments and EPA Response

EPA received one comment on the May 21, 2019 NPRM. The comment and EPA's response are discussed below. The comment is included in the docket for this action, available online at *www.regulations.gov,* Docket ID: EPA–R03–OAR–2018–0387.

*Comment:* On June 20, 2019, EPA received an anonymous comment on the May 21, 2019 NPRM. The commenter stated that EPA should not redesignate the Washington Area because ''this area has violated the ozone NAAQS for the 2008 year based on data from the Metropolitan Washington Council of Governments website''.[4] The commenter stated that based on this data, the 2008 ozone NAAQS was violated five times in 2018 in Washington, DC. The commenter notes that although this data is preliminary, EPA should have access to data that is ''quality assured and reviewed that is not yet final.'' The commenter requests that EPA review the air quality data for 2018 and ensure the ''air quality is clean for the 2008 standard based on the most recent available air quality data including the 2018 year.''

*EPA Response:* The commenter misunderstands the 2018 air quality monitoring data cited in their comment, and how to interpret that data in the context of whether an area is attaining the 2008 ozone NAAQS. As discussed in the May 21, 2019 NPRM, on November 14, 2017 (82 FR 52651), EPA

[1] On April 15, 2019 (84 FR 15108), EPA approved Maryland and Virginia's requests to redesignate to attainment their portions of the Washington Area from marginal nonattainment to attainment of the 2008 ozone NAAQS.

[2] The following EPA guidance documents are included in the docket for this rulemaking available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2018–0387: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the ''Calcagni memorandum'') and ''State Implementation Plan (SIP) requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (the ''Shapiro memorandum'').

[3] EPA's April 15, 2019 action redesignated the following jurisdictions in Maryland and Virginia to attainment for the 2008 ozone NAAQS: The Counties of Calvert, Charles, Frederick, Montgomery, and Prince George's in Maryland as well as the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia.

[4] The commenter included the following link in their comment, which provides daily air quality data for the Washington Area: *https://www.mwcog.org/environment/planning-areas/air-quality/air-quality-data/.*

determined that the entire Washington Area attained the 2008 NAAQS by the July 20, 2016 attainment date. EPA has also reviewed the most recent ambient air quality monitoring data for ozone in the Washington Area and finds that the Washington Area continues to attain the 2018 ozone NAAQS. The data cited by the commenter does not demonstrate a violation of the 2008 NAAQS. Therefore, as explained below, EPA correctly concluded in the May 21, 2019 NPRM that the District satisfies the CAA section 107(d)(3)(E)(i) requirement for redesignation to attainment under the 2008 ozone NAAQS, and the data cited by the commenter does not change that conclusion.

The air quality data cited by the commenter indicates the daily maximum 8-hour concentrations of ozone recorded at air quality monitors located in the Washington Area. Compliance with the 2008 ozone NAAQS is not determined by whether an area's daily maximum concentrations exceed the level of the NAAQS, but rather is determined by whether an area's ''design value'' statistic meets the NAAQS. For the 2008 ozone NAAQS, the design value for an air quality monitor is determined by calculating the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations recorded at that monitor. See 40 CFR 50.15(b). An area's design value is based on the monitor in the area which records the highest design value over the three-year period. As discussed in the May 21, 2019 NPRM, an area ''attains'' the 2008 ozone NAAQS if the area's design value is below 0.075 ppm. The final 2015–2017 design values and preliminary 2016–2018 design values, included in Table 1 of the May 21, 2019 NPRM, are below the 2008 ozone NAAQS. See 84 FR 22998. As can be seen in Table 1 of the May 21, 2019 NPRM, the highest 2015–2017 design value in the Washington Area is 0.071 ppm and the highest preliminary 2016–2018 design value in the Washington Area is 0.072 ppm, both of which are below the 2008 ozone NAAQS. The data cited by the commenter therefore do not show that the Washington Area has violated the 2008 ozone NAAQS, and we are finalizing the finding that the Washington area has satisfied the CAA section 107(d)(3)(E)(i) requirement for redesignation to attainment under the 2008 ozone NAAQS.

In response to the commenter's request that EPA consider air quality data for 2018, EPA did evaluate preliminary 2018 ambient air quality monitoring data for ozone in the Washington Area and included this data in the May 21, 2019 NPRM and the docket for the rulemaking action available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2018–0387. Therefore, EPA's determination that the Washington Area continues to attain the 2008 ozone NAAQS is based on the most recent ambient air quality data for ozone in the Washington Area, including preliminary 2016–2018 design values.

## IV. Final Action

EPA is approving the District of Columbia's request to redesignate the District's portion of the Washington, DC-MD-VA area to attainment for the 2008 ozone NAAQS.

## V. Statutory and Executive Order Reviews

### *A. General Requirements*

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. 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 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action

redesignating to attainment the District's portion of the Washington Area for the 2008 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 5, 2019.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

40 CFR part 81 is amended as follows:

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

### Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.309, the table ''District of Columbia—2008 8-Hour Ozone NAAQS [Primary and secondary]'' is revised to read as follows:

**§ 81.309 District of Columbia.**

* * * * *

DISTRICT OF COLUMBIA—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| * * * * | * | | * | * |
| Washington, DC-MD-VA: District of Columbia [1] | July 16, 2019 | Attainment. | | |
| * * * * | * | | * | * |

[1] Excludes Indian country located in each area, unless otherwise noted.

* * * * *

[FR Doc. 2019–15090 Filed 7–15–19; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 215 and 252

**[Docket DARS–2018–0008]**

**RIN 0750–AJ19**

### Defense Federal Acquisition Regulation Supplement: Only One Offer (DFARS Case 2017–D009); Correction

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule; correction.

**SUMMARY:** DoD is issuing a correction to the final rule ''Only One Offer (DFARS Case 2017–D009),'' which was published in the **Federal Register** on June 28, 2019. This document corrects a threshold referenced in the summary of the final regulatory flexibility analysis, the dates of the solicitation provision and contract clause, and a minor typographical error.

**DATES:** *Effective:* July 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, telephone 571–372–6106.

**SUPPLEMENTARY INFORMATION:**

*Corrections*

In the rule FR Doc. 2019–13739, published in the **Federal Register** at 84 FR 30947 on June 28, 2019, make the following corrections:

**Preamble Correction**

1. On page 30949, in the second column, correct the last sentence of the last paragraph under Section VI. Regulatory Flexibility Act to read as follows:

Impact on small businesses is lessened, because the requirement for certified cost or pricing data only applies to acquisitions that exceed $2 million and there is an exception for the acquisition of commercial items, including COTS items.

**Regulatory Text Corrections**

**252.215–7008 [Corrected]**

■ 2. On page 30950, in the first column, in amendatory instruction 4.a. for section 252.215–7008, remove the provision date ''(JUN 2019)'' and add ''(JUL 2019)'' in its place.

**252.215–7010 [Corrected]**

■ 3. On page 30950, in the second column, for section 252.215–7010—

■ a. In amendatory instruction 5.a.i., remove the clause date ''(JUN 2019)'' and add ''(JUL 2019)'' in its place; and

■ b. In paragraph (c)(3), removed ''satisfy to Government's'' and add ''satisfy the Government's'' in its place.

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

[FR Doc. 2019–14991 Filed 7–15–19; 8:45 am]

**BILLING CODE 5001–06–P**

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Part 501

**[GSAR Change 102; GSAR Case 2016–G509; Docket No. GSA–GSAR–2019–0009; Sequence No. 1]**

**RIN 3090–AJ83**

### General Services Administration Acquisition Regulation (GSAR); Updates to the Issuance of GSA's Acquisition Policy

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Direct final rule.

**SUMMARY:** The General Services Administration (GSA) is issuing this direct final rule to amend the General Services Administration Acquisition Regulation (GSAR) to remove internal agency guidance regarding deviations from the Federal Acquisition Regulation (FAR) and General Services Administration Acquisition Manual (GSAM) and move it to GSA's non-regulatory acquisition policy.

**DATES:** This final rule is effective on September 16, 2019, without further notice unless adverse comments are received by August 15, 2019.

**ADDRESSES:** Submit comments in response to GSAR Case 2016–G509 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''GSAR Case 2016–G509''. Select the link ''Comment Now'' that corresponds with ''GSAR Case 2016–G509.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''GSAR Case 2016–G509'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd floor, Washington, DC 20405.

*Instructions:* Please submit comments only and cite ''GSAR Case 2016–G509'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas O'Linn, Procurement Analyst, at 202–445–0390, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2016–G509—Updates to the Issuance of GSA's Acquisition Policy.

**SUPPLEMENTARY INFORMATION:**

## I. Background

As part of GSA's regulatory reform efforts, GSA has been performing a comprehensive review of the regulatory requirements in the GSAR. As a part of these efforts, GSA identified internal agency guidance on roles and responsibilities on issuing GSA acquisition policies and approval requirements that need to be moved to GSA's non-regulatory acquisition policy located with the GSAM. Additionally, GSA identified other administrative aspects of GSAR part 501 that needed updating as well. As a result, GSA included as part of the Fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions in the **Federal Register** at 83 FR 57803 on November 16, 2018 its intention to publish a final rule notice in the **Federal Register**.

## II. Discussion and Analysis

Federal Acquisition Regulation (FAR) 1.301(a)(2) provides an agency head the ability to issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.,* designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements). Furthermore, FAR 1.301(b) states that publication for public comment is not required for issuances under FAR 1.301(a)(2).

GSA's implementation and supplementation of the FAR is issued in the GSAM, which includes the GSAR. The GSAR contains policies and procedures that have a significant effect beyond the internal operating procedures of GSA or a significant cost or administrative impact on contractors or offerors (see FAR 1.301(b)). Relevant procedures, guidance, instruction, and information that do not meet this criteria are issued through the non-regulatory portion of the GSAM and other GSA publications.

As a part of GSA's comprehensive review of its regulatory requirements in the GSAR, internal agency guidance was identified within GSAR subpart 501 that could be moved to GSA's non-regulatory acquisition policy of the GSAM. This internal guidance does not have a significant effect beyond the internal operating procedures of GSA or a significant cost or administrative impact on contractors or offerors (see FAR 1.301(b)). As a result, this action represents an administrative clean-up to remove internal agency guidance from the GSAR and move it to GSA's non-regulatory acquisition policy. The benefit of moving this from the GSAR to the GSAM is that it is easier and more efficient to update internal operating procedures as necessary. With the increasing pace of change in technology and business process, this change makes it easier to keep the most-up-to-date procedures in place.

The amendments to GSAR part 501 are minor and reflect needed changes to bring the language up-to-date.

## III. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

## V. Regulatory Flexibility Act

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this is a noncontroversial action that only impacts the agency's internal operating procedures, and GSA anticipates no significant adverse comments.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (GSAR Case 2016–G509), in correspondence.

## VI. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Part 501.

Government procurement.

**Jeffrey A. Koses,**

*Senior Procurement Executive, Office of Acquisition Policy, Office of Governmentwide Policy, General Services Administration.*

Therefore, GSA amends 48 CFR part 501 as set forth below:

## PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR part 501 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

### 501.104 [Amended]

■ 2. Amend section 501.104 by removing paragraph (d).

■ 3. Amend section 501.105–1 by revising paragraph (a) and removing paragraphs (c) and (d).

The revision reads as follows:

**501.105–1 Publication and code arrangement.**

* * * * *

(a) The **Federal Register** at *https://www.federalregister.gov/.*

* * * * *

■ 4. Revise section 501.105–3 to read as follows:

**501.105–3 Copies.**

Copies of the GSAR may be purchased from the Government Printing Office at *https://www.gpo.gov/.* The GSAR is also available electronically at *https://www.ecfr.gov/* or at *https://www.acquisition.gov* under the agency supplements tab.

**Subpart 501.4 [Removed]**

■ 5. Remove subpart 501.4, consisting of 501.402 through 501.404–71.

[FR Doc. 2019–15056 Filed 7–15–19; 8:45 am]

BILLING CODE 6820–61–P

# Proposed Rules

Federal Register
Vol. 84, No. 136
Tuesday, July 16, 2019

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 981

**[Doc. No. AMS–SC–19–0041; SC19–981–3 CR]**

### Almonds Grown in California; Continuance Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a referendum be conducted among eligible almond growers to determine whether they favor continuance of the marketing order regulating the handling of almonds grown in California.

**DATES:** The referendum will be conducted from August 5 through August 16, 2019. Only current growers of almonds within the production area that grew almonds during the period August 1, 2018, through July 31, 2019, are eligible to vote in this referendum.

**ADDRESSES:** Copies of the marketing order may be obtained from the California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721–3129; Telephone: (559) 538–1670; from the Office of the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; or on the internet: *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Peter Sommers, Marketing Specialist, or Terry Vawter, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721–3129; Telephone: (559) 538–1670, Fax: (559) 487–5906, or Email: *Peterr.Sommers@usda.gov* or *Terry.Vawter@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Agreement and Order No. 981, as amended (7 CFR part 981), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by growers. The referendum will be conducted from August 5 through August 16, 2019, among almond growers in the production area. Only current almond growers that were also engaged in the production of almonds during the period of August 1, 2018, through July 31, 2019, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the Order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of almonds represented in the referendum favor continuance of the program. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding operation of the Order and relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the Order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178, Vegetable Crops. It has been estimated it will take an average of 10 minutes for each of the approximately 8,000 almond growers to cast a ballot. Participation is voluntary. Ballots postmarked after August 16, 2019, will not be included in the vote tabulation.

Peter Sommers and Terry Vawter of the California Marketing Field Office, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or from their appointees.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, and Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601–674.

Dated: July 11, 2019.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2019–15059 Filed 7–15–19; 8:45 am]

**BILLING CODE 3410–02–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50, 52, and 73

**[Docket No. NRC–2017–0227]**

**RIN 3150–AK19**

### Physical Security for Advanced Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory basis; public meeting, and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on a regulatory basis to support a rulemaking that would amend the NRC's regulations to develop specific physical security requirements for advanced reactors, which refers to light-water small modular reactors and non-light-water reactors. The NRC is proposing a limited-scope rulemaking that would provide a clear set of alternative, performance-based requirements and guidance for advanced reactor physical security that would reduce the need for exemptions to current physical security requirements when applicants request permits and licenses. This rulemaking would provide additional benefits for advanced reactor applicants by establishing greater regulatory stability,

predictability, and clarity in the licensing process. The NRC plans to hold a public meeting to discuss the regulatory basis and facilitate public participation.

**DATES:** Submit comments by August 15, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0227. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ilka T. Berrios, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–2404; email: *Ilka.Berrios@nrc.gov;* or William Reckley, Office of New Reactors; telephone: 301–415–7490; email: *William.Reckley@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

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## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2017–0227 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–2017–0227.
- *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 regulatory basis document is available in ADAMS under Accession No. ML19099A017.
- *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.

### *B. Submitting Comments*

Please include Docket ID NRC–2017–0227 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

Please note that the NRC will not provide formal written responses to each of the comments received on the regulatory basis. However, the NRC will consider all comments received in the development of the proposed rule.

## II. Discussion

In 2018, the staff submitted SECY–18–0076, ''Options and Recommendation for Physical Security for Advanced Reactors,'' dated August 1, 2018, (ADAMS Accession No. ML18170A051), presenting alternatives and a recommendation to the Commission on possible changes to the regulations and guidance related to physical security for advanced reactors (light-water small modular reactors and non-light-water reactors). The staff evaluated the advantages and disadvantages of each alternative and recommended a limited-scope rulemaking to further assess and, if appropriate, revise a limited set of NRC regulations. The staff also recommended developing necessary guidance to address performance criteria for which the alternative requirements may be applied for advanced reactor license applicants. In the Staff Requirements Memorandum (SRM)—SECY–18–0076, dated November 19, 2018, (ADAMS Accession No. ML18324A478), the Commission approved the staff's recommendation to initiate a limited-scope rulemaking.

As a result, the NRC is considering rulemaking for advanced reactors that could be licensed under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' or 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This limited-scope rulemaking would apply the insights from advances in designs and safety research; retain the NRC's overall security regulations framework; and provide alternatives and guidance related to specific physical security requirements. For the purposes of this limited-scope rulemaking, the term advanced reactors will refer only to light-water small modular reactors and non-light-water reactors.

The NRC's current physical security regulations for nuclear power plants were developed to address the risk of radiological consequences from radiological sabotage of a nuclear power plant that uses special nuclear material and the theft or diversion of special nuclear material from these facilities. This rulemaking will focus on the threats from radiological sabotage. Potential threats related to theft and diversion of special nuclear material are outside the scope of this limited-scope rulemaking, but may be considered in future projects.[1] Given that the current

[1] Many non-light-water reactor designs are expected to use higher assay low-enriched uranium (*i.e.,* between 5- and 20-percent enrichments) and fuel forms other than the traditional uranium

fleet of nuclear power plants consists of large light-water reactors, NRC regulations were developed in the context of security challenges related to large light-water reactors. These regulations do not take into account advances in designs and engineered safety features, and their applications to advanced reactors.

The regulatory basis summarizes the current physical security framework for large light-water reactors against radiological sabotage, describes regulatory issues that have motivated the NRC to pursue rulemaking, evaluates various alternatives to address physical security for advanced reactors, and identifies the background documents related to these issues. In the regulatory basis, the term advanced reactors refers to light-water small modular reactors and non-light-water reactors. As defined in § 170.3, the term *Small modular reactors* refers to a nuclear reactor (or module) designed to produce heat energy up to 1,000 megawatts thermal or electrical energy up to approximately 300 megawatts electric per module that the Commission licensed under the authority granted by Section 103 of the Atomic Energy Act of 1954, as amended, and pursuant to the provisions of § 50.22, ''Class 103 licenses; for commercial and industrial facilities.''

The NRC is requesting comment on the regulatory basis to support consideration of a rulemaking that would provide alternatives and guidance related to specific physical security requirements for advanced reactors. The NRC will consider the comments received on the regulatory basis as it develops this proposed rule.

This limited-scope rulemaking aims to retain the current overall security requirements framework in § 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' to protect against radiological sabotage, while providing alternatives for advanced reactors to specific physical security-related regulations.

The physical security measures established under current NRC regulations are technology-inclusive. Under this limited-scope rulemaking, the NRC would apply a similar, technology-inclusive approach for advanced reactors to accommodate a variety of facility designs, systems, and purposes. The technical basis for offering an alternative for the physical security requirements for advanced reactors is the combination of inherent reactor characteristics and demonstration of security incorporated into the advanced reactor designs that reduces reliance on human actions to mitigate attempted acts of radiological sabotage.

The limited-scope rulemaking would target the identified requirements that rely on human actions for interdiction and post-attack command and control. Specifically, the limited-scope rulemaking would focus on establishing a performance-based approach and associated criteria to assess advanced reactor attributes, as described in the Policy Statement on the Regulation of Advanced Reactors, published in the **Federal Register** (FR) on October 14, 2008 (73 FR 60612), to determine whether alternatives to the prescribed minimum number of armed responders currently defined in § 73.55(k)(5)(ii) and the prescriptive requirements defined in § 73.55(i)(4)(iii) for an onsite secondary alarm station are applicable. The NRC is aware of the safety improvements expected to be generally found in advanced reactors due to their incorporation of simplified, inherent, and passive features. These features may result in smaller and slower fission product releases following a loss of safety functions from malfunctions and from many malicious acts.

The advantages of pursuing a limited-scope rulemaking related to advanced reactor physical security include:

- Promote regulatory stability, predictability, and clarity.
- Reduce the need for future applicants to propose alternatives or request exemptions from physical security requirements.
- Recognize technology advancements and design features associated with the NRC-recommended attributes of advanced reactors.
- Replace prescriptive regulations with risk-informed, performance-based requirements.

## III. Specific Request for Comment

The NRC is seeking comments and supporting rationale from the public on the following questions:

(1) Is it feasible to define performance criteria related to offsite consequences for advanced reactors with attributes as defined in the Policy Statement on the Regulation of Advanced Reactors, that could be used to determine the applicability of alternative, performance-based physical security requirements while maintaining adequate protection of plant equipment and personnel by the overall physical security program?

(2) If feasible to define performance criteria to determine the applicability of alternative, performance-based requirements for a limited scope of physical security regulations, are the possible criteria, as proposed in Section 4.5 of the regulatory basis, reasonable and sufficient to ensure that the resultant physical security programs provide reasonable assurance of adequate protection of public health and safety or would other criteria be more appropriate? (Respondents should describe suggested alternatives.)

(3) It is anticipated that engineered safety features may result in a slow accident progression that could allow for reliance on offsite licensee response to support the prevention of offsite consequences for advanced reactors with attributes as defined in the Policy Statement. The staff expects that future discussions will involve evaluating the feasibility of reliance on these resources for security response and to help recover facilities and mitigate events. What types of engineering, administrative, and programmatic controls should be considered in any future evaluations of this approach?

## IV. Cumulative Effects of Regulation

The cumulative effects of regulation (CER) describes the challenges that licensees or other impacted entities (such as State agency partners, Tribal and local governments) may face while implementing new regulatory positions, programs, and requirements (*e.g.,* rules, generic letters, backfits, inspections). The CER is an organizational challenge that results from a licensee or impacted entity implementing a number of complex positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). The NRC has implemented CER enhancements to the rulemaking process to facilitate public involvement throughout the rulemaking process. Therefore, the NRC is specifically requesting comments on the cumulative effects that may result from this proposed rulemaking. In developing comments on the regulatory basis, consider and provide comments on the following questions:

1. In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any proposed

dioxide pellets used for light-water reactors. Different fuel forms introduce the possible need to develop new approaches to material control and accounting practices and protections against theft and diversion throughout the fuel cycle, including at reactor facilities. Future interactions between the staff and stakeholders will cover these and other issues related to higher assay low-enriched uranium and the nuclear fuel cycle.

requirements, including changes to programs, procedures, and the facility?

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for subsequent implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (*e.g.,* orders, generic communications, license amendment requests, and inspection findings of a generic nature) influence the subsequent implementation of the proposed rule's requirements?

4. Are there unintended consequences? Does the regulatory basis create conditions that would be contrary to the regulatory basis' purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

## V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## VI. Public Meeting

The NRC plans to hold a public meeting during the public comment period for this document. The public meeting will provide a forum for the NRC to discuss the issues and questions with external stakeholders regarding the regulatory basis to support a proposed rulemaking that would provide alternatives and guidance related to specific physical security requirements for advanced reactors. The NRC does not intend to provide detailed responses to comments or other information submitted during the public meeting.

The public meeting will be noticed on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's Public Meeting Schedule web page for additional information about the public meeting at *http://meetings.nrc.gov/pmns/mtg.*

The NRC will post a notice for the public meeting and may post additional material related to this action to the Federal Rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2017–0227.

Dated at Rockville, Maryland, this 10th day of July 2019.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Director, Division of Rulemaking, Office of Nuclear Materials Safety and Safeguards.*

[FR Doc. 2019–15008 Filed 7–15–19; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 150

**[NRC–2019–0114]**

## State of Vermont: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Vermont

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed state agreement; request for comment.

**SUMMARY:** By letter dated April 11, 2019, Governor Philip Scott of the State of Vermont requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of Vermont as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (AEA).

Under the proposed Agreement, the Commission would discontinue, and the State of Vermont would assume, regulatory authority over certain types of byproduct materials as defined in the AEA, source material, and special nuclear material in quantities not sufficient to form a critical mass.

As required by Section 274e. of the AEA, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Vermont's regulatory program. Comments are requested on the proposed Agreement and its effect on public health and safety. Comments are also requested on the draft staff assessment, the adequacy of the State of Vermont's program, and the State's program staff, as discussed in this document.

**DATES:** Submit comments by July 25, 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:** You may submit comments by the following method:

• Federal Rulemaking Web Site: Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0114. Address questions about NRC dockets in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; e-mail: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Duncan White, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–2598, e-mail: *Duncan.White@nrc.gov* of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2019–0114 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 Web Site:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0114.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://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, at 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The final application for an AEA Section 274 Agreement from the State of Vermont, the draft assessment of the proposed Vermont program, and additional related correspondence between the NRC and the State for the regulation of agreement materials are available in ADAMS under Accession Nos. ML19107A432, ML19114A092, ML19115A214, ML19102A130 and ML19113A279.

• *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.

*B. Submitting Comments*

Please include Docket ID NRC–2019–0114 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission.

The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Additional Information on Agreements Entered Under Section 274 of the AEA

Under the proposed Agreement, the NRC would discontinue its authority over 36 licenses and would transfer its regulatory authority over those licenses to the State of Vermont. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This document is being published in fulfillment of that requirement.

## III. Proposed Agreement With the State of Vermont

*Background*

(a) Section 274b. of the AEA provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State of Vermont requests authority over are:

1. The possession and use of byproduct material as defined in Section 11e.(1) of the Act;

2. The possession and use of byproduct material as defined in Section 11e.(3) of the Act;

3. The possession and use of byproduct material as defined in Section 11e.(4) of the Act;

4. The possession and use of source material; and

5. The possession and use of special nuclear material, in quantities not sufficient to form a critical mass.

(b) The proposed Agreement contains articles that:

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the materials and activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard special nuclear material, protect restricted data, and protect common defense and security;

(iv) Commit the State of Vermont and the NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the proposed Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Vermont.

(c) The regulatory program is authorized by law under the Vermont Statutes Annotated (VT. STAT. ANN.) title 18, sections 1651 through 1657, which provides the Governor with the authority to enter into an Agreement with the Commission. The State of Vermont law contains provisions for the orderly transfer of regulatory authority over affected licenses from the NRC to the State. In a letter dated April 11, 2019, Governor Scott certified that the State of Vermont has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Vermont for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities (ADAMS Accession No. ML19116A227). After the effective date of the Agreement, licenses issued by the NRC would continue in effect as State of Vermont licenses until the licenses expire or are replaced by State-issued licenses.

(d) The draft staff assessment finds that the Vermont Department of Health's Radioactive Materials Program is adequate to protect public health and safety and is compatible with the NRC's regulatory program for the regulation of Agreement materials. However, the NRC staff identified several sections of the Vermont Radioactive Materials regulations that were either not compatible or needed additional editorial changes. By letter dated May 10, 2019, the NRC staff described these compatibility and editorial issues, and requested that the Vermont Department of Health reply within 60 days with a commitment to make the described regulatory changes as soon as practicable (ADAMS Accession No. ML19102A160). The resolution of these comments does not interfere with the NRC staff's processing of Vermont's Agreement State Application. On June 6, 2019, the NRC received a letter from the Vermont Department of Health committing to making these compatibility and editorial changes (ADAMS Accession No. ML19161A133). Therefore, the State of Vermont has committed to adopting an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

*Summary of the Draft NRC Staff Assessment of the State of Vermont's Program for the Regulation of Agreement Materials*

The NRC staff has examined the State of Vermont's request for an Agreement with respect to the ability of the State's radiation control program to regulate Agreement materials. The examination was based on the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540, January 23, 1981, as amended by Policy Statements published at 46 FR 36969, July 16, 1981, and at 48 FR 33376, July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA-700, ''Processing an Agreement'' (available at *https://scp.nrc.gov/procedures/sa700.pdf* and *https://scp.nrc.gov/procedures/sa700_hb.pdf*). The Policy Statement has 28 criteria that serve as the basis for the NRC staff's assessment of the State of Vermont's request for an Agreement. The following section will reference the appropriate criteria numbers from the

Policy Statement that apply to each section.

(a) Organization and Personnel. The NRC staff reviewed these areas under Criteria 1, 2, 20, and 24 in the draft staff assessment. The State of Vermont's proposed Agreement materials program for the regulation of radioactive materials is called the ''Radioactive Materials Program,'' and will be located within the existing Office of Radiological Health of the Vermont Department of Health.

The educational requirements for the Radioactive Materials Program staff are specified in the State of Vermont's personnel position descriptions and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a Master's Degree in either environmental science or radiologic and imaging sciences. All have training and work experience in radiation protection. Supervisory level staff have at least 20 years of working experience in radiation protection.

The State of Vermont performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State of Vermont's analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the proposed Agreement. The State of Vermont will employ the equivalent of 1.25 full-time equivalent professional and technical staff to support the Radioactive Materials Program.

The State of Vermont has indicated that the Radioactive Materials Program has an adequate number of trained and qualified staff in place. The State of Vermont has developed qualification procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Radioactive Materials Program staff has accompanied the NRC staff on inspections of NRC licensees in Vermont and participated in licensing training at NRC's Region I with Division of Nuclear Materials Safety staff. The Radioactive Materials Program staff is also actively supplementing its experience through direct meetings, discussions, and facility visits with the NRC licensees in the State of Vermont and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Radioactive Materials Program staff identified by the State of Vermont to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. The NRC staff reviewed these areas under Criteria 1–15, 17, 19, and 21–28 in the draft staff assessment. The Vermont Statutes Annotated, VT. STAT. ANN. tit. 18, sections 1651 through 1657 provide the authority to enter into the Agreement and establish the Vermont Department of Health as the lead agency for the State's Radioactive Materials Program. The Department has the requisite authority to promulgate regulations under the Vermont Statutes Annotated, VT. STAT. ANN. tit. 18, section 1653(b)(1) for protection against radiation. The Vermont Statutes Annotated, VT. STAT. ANN. tit. 18, sections 1651 through 1657 also provide the Radioactive Materials Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. The Vermont Statutes Annotated, VT. STAT. ANN. tit. 18, section 1654 requires licensees to provide access to inspectors.

The NRC staff verified that the State of Vermont adopted by reference the relevant NRC regulations in parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR) into the Vermont Radioactive Materials Rule, Chapter 6, Subchapter 5. During its review, the NRC staff identified several sections of the final Vermont Radioactive Materials regulations that are not compatible or need editorial changes. By letter dated May 10, 2019, the NRC staff described these compatibility and editorial issues, and requested that the Vermont Department of Health reply within 60 days with a commitment to make the described regulatory changes as soon as practicable. The resolution of these comments does not interfere with the NRC staff's processing of Vermont's Agreement State Application. On June 6, 2019, the NRC staff received a letter from the Vermont Department of Health committing to making these compatibility and editorial changes. Therefore, the State of Vermont has committed to adopting an adequate and compatible set of radiation protection regulations that apply to byproduct materials, source material and special nuclear material in quantities not sufficient to form a critical mass. The NRC staff also verified that the State of Vermont will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The NRC staff reviewed these areas under Criteria 8, 9a, and 11 in the draft staff assessment. The State of Vermont has adopted NRC compatible requirements for the handling and storage of radioactive material, including regulations equivalent to the applicable standards contained in 10 CFR part 20, which address the general requirements for waste disposal, and part 61, which addresses waste classification and form. These regulations are applicable to all licensees covered under this proposed Agreement.

(d) Transportation of Radioactive Material. The NRC staff reviewed this area under Criteria 10 in the draft staff assessment. The State of Vermont has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) Recordkeeping and Incident Reporting. The NRC staff reviewed this area under Criteria 1 and 11 in the draft staff assessment. The State of Vermont has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials.

(f) Evaluation of License Applications. The NRC staff reviewed this area under Criteria 1, 7, 8, 9a, 13, 14, 15, 20, 23, and 25 in the draft staff assessment. The State of Vermont has adopted compatible regulations to the NRC regulations that specify the requirements to obtain a license to possess or use radioactive materials. The State of Vermont has also developed licensing procedures and adopted NRC licensing guides for specific uses of radioactive material for use by the program staff when evaluating license applications.

(g) Inspections and Enforcement. The NRC staff reviewed these areas under Criteria 1, 16, 18, 19, and 23 in the draft staff assessment. The State of Vermont has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Vermont's Radioactive Materials Program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Vermont has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The NRC staff reviewed this area under

Criterion 23 in the draft staff assessment. The State of Vermont is bound by requirements specified in its State law for rulemaking, issuing licenses, and taking enforcement actions. The State of Vermont has also adopted administrative procedures to assure fair and impartial treatment of license applicants. The State of Vermont law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. The NRC staff reviewed this area under Criteria 25, 26, and 27 in the draft staff assessment. The State of Vermont law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of active NRC licenses. Upon the effective date of the Agreement, all active NRC radioactive materials licenses issued to facilities in the State of Vermont will be recognized as Vermont Department of Health licenses.

The State of Vermont also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

The State of Vermont regulations, in Vermont Radioactive Materials Rule Chapter 6, Subchapter 5, provide exemptions from the State's requirements for the NRC and the U.S. Department of Energy contractors or subcontractors; the exemptions must be authorized by law and determined not to endanger life or property and to otherwise be in the public interest. The proposed Agreement commits the State of Vermont to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement specifies the desirability of reciprocal recognition of licenses, and commits the Commission and the State of Vermont to use their best efforts to accord such reciprocity. The State of Vermont would be able to recognize the licenses of other jurisdictions by general license.

*Staff Conclusion*

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the Agreement materials within the State, and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification of Vermont Governor Scott, and the supporting information provided by the Radioactive Materials Program of the Vermont Department of Health. Based upon this review, the NRC staff concludes that the State of Vermont Radioactive Materials Program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.'' The NRC staff also concludes that the proposed State of Vermont program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing, is compatible with the Commission's program and is adequate to protect the public health and safety with respect to the materials covered by the proposed Agreement. Therefore, the proposed Agreement meets the requirements of Section 274 of the AEA.

Dated at Rockville, Maryland, this 19th day of June, 2019.

For the Nuclear Regulatory Commission.

**Andrea L. Kock,**

*Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards.*

Note: The following appendix will not appear in the Code of Federal Regulations.

**APPENDIX A**

**AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF VERMONT FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as ''the Commission'') is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 *et seq.* (hereinafter referred to as ''the Act''), to enter into agreements with the Governor of the State of Vermont (hereinafter referred to as ''the State'') providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, The Governor of the State of Vermont is authorized under VT. STAT. ANN. tit. 18, § 1653 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Vermont certified on April 11, 2019, that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on **[date]** that the program of the State of Vermont for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

WHEREAS, The State of Vermont and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State of Vermont recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the provisions of the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of Vermont acting on behalf of the State as follows:

*ARTICLE I*

Subject to the exceptions provided in Articles II, IV, and V, the Commission

shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct material as defined in Section 11e.(1) of the Act;
2. Byproduct material as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials; and
5. Special nuclear materials, in quantities not sufficient to form a critical mass.

*ARTICLE II*

This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

A. The regulation of byproduct material as defined in Section 11e.(2) of the Act;

B. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons;

C. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

D. The regulation of the construction, operation, and decommissioning of any production or utilization facility or any uranium enrichment facility;

E. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

F. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in regulations or orders of the Commission;

G. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission; and

H. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150.

*ARTICLE III*

With the exception of those activities identified in Article II, paragraphs D. through H., this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, paragraphs A. through C., whereby the State may then exert regulatory authority and responsibility with respect to those activities.

*ARTICLE IV*

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

*ARTICLE V*

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to promote the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

*ARTICLE VI*

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against the hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against the hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

*ARTICLE VII*

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

*ARTICLE VIII*

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of Vermont, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act, if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

Pursuant to Section 274j. of the Act, the Commission may, after notifying the Governor, temporarily suspend all or part of this Agreement without notice or hearing if, in the judgment of the Commission, an emergency situation exists with respect to any material covered by this agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside of the State and the State has failed to take steps necessary to contain or eliminate the cause of danger within a reasonable time after the situation arose. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect the public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

*ARTICLE IX*

This Agreement shall become effective on **[date]**, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at **[location]** this **[date]** day of **[month]**, 2019.

For the Nuclear Regulatory Commission.

Kristine L. Svinicki, Chairman

Done at **[location]** this **[date]** day of **[month]**, 2019.

For the State of Vermont.

Philip B. Scott, Governor

[FR Doc. 2019–13412 Filed 7–15–19; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF ENERGY

## 10 CFR Part 430

**[EERE–2018–BT–STD–0005]**

**RIN 1904–AE35**

## Energy Conservation Program: Energy Conservation Standards for Dishwashers, Grant of Petition for Rulemaking

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Energy (DOE) received a petition from the Competitive Enterprise Institute (CEI) to define a new product class under the Energy Policy and Conservation Act, as amended (EPCA), for residential dishwashers. The new product class would cover dishwashers with a cycle time for the normal cycle of less than one hour from washing through drying. DOE published this petition and request for comments in the **Federal Register** on April 24, 2018. Based upon its evaluation of the petition and careful consideration of the public comments, DOE has decided to grant this petition for rulemaking and propose a dishwasher product class with a cycle time for the normal cycle of less than one hour. DOE intends to consider appropriate energy and water use limits for such a product class, if adopted, in a separate rulemaking.

**DATES:** Written comments and information are requested on or before and will be accepted on or before September 16, 2019.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2018–BT–STD–0005, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: Dishwashers2018STD0005@ee.doe.gov.* Include the docket number EERE–2018–BT–STD–0005 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VI of this document.

*Docket:* The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI for information on how to submit comments through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mrs. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** DOE proposes to incorporate by reference the following industry standard into 10 CFR part 430: ANSI/AHAM DW–1–2010, Household Electric Dishwashers, (ANSI approved September 18, 2010).

A copy of ANSI/AHAM DW–2010 is available at: Association of Home Appliance Manufacturers, 1111 19th Street NW, Suite 402, Washington, DC 20036, 202–872–5955, or go to *http://www.aham.org.*

For a further discussion of this standard, see section VII.M.

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## I. Introduction

### *A. Background*

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) Pursuant to this provision of the APA, CEI petitioned DOE for the issuance of rule establishing a new product class under 42 U.S.C. 6295(q) that would cover dishwashers with a cycle time of less than one hour from washing

through drying. (CEI Petition, No. 0006 at p. 1) [1]

CEI stated that dishwasher cycle times have become dramatically longer under existing DOE energy conservation standards, and that consumer satisfaction/utility has dropped as a result of these longer cycle times. CEI also provided data regarding the increase in dishwasher cycle time, including data that, according to CEI, correlated increased cycle time with DOE's adoption of amended efficiency standards for dishwashers. (CEI Petition, No. 0006 at pp. 2–3)

CEI cited to 42 U.S.C. 6295(q) as the authority for DOE to undertake the requested rulemaking. (CEI Petition, No. 0006 at pp. 4–5) Section 6295(q) requires that for a rule prescribing an energy conservation standard for a type (or class) of covered products, DOE specify a level of energy use or efficiency higher or lower than the level that applies (or would apply) to such type (or class) for any group of covered products that have the same function or intended use, if DOE determines that covered products within such group either: (1) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (2) have a capacity or other performance-related feature that other products within such type (or class) do not have, and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class). (42 U.S.C. 6295(q)(1)) In determining whether a performance related feature justifies a higher or lower standard, DOE must consider such factors as the utility to the consumer of the feature, and other appropriate factors. (*Id.*) In any rule prescribing a higher or lower level of energy use or efficiency, DOE must explain the basis on which the higher or lower level was established. (42 U.S.C. 6295(q)(2))

The current energy conservation standards distinguish between standard dishwashers and compact dishwashers. 10 CFR 430.32(f). In general, a *standard dishwasher* is a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces. See, 10 CFR part 430 subpart B appendix C1 (''Appendix C1''), section 1.20. A *compact dishwasher* is, in general, a dishwasher that has a capacity of less than eight place settings plus six serving pieces. Appendix C1, section 1.4.

CEI requested that dishwashers be further divided based on cycle time. CEI asserted that given the significant amount of consumer dissatisfaction with increased dishwasher cycle time, cycle time is a ''performance-related feature'' that provides substantial consumer utility, as required by EPCA for the establishment of a product class with a higher or lower energy use or efficiency standard than the standards applicable to other dishwasher product classes. (CEI Petition, No. 0006 at p. 5) CEI did not specify whether it was requesting the additional distinction be applied to both the standard and compact classes or just the standard class. For purposes of this proposal, DOE assumes that CEI requests the distinction only for the standard class, which represents a much larger percentage of dishwasher shipments. DOE seeks comment, however, on whether the one hour product class distinction should apply to both standard and compact dishwashers.

CEI also cited to 42 U.S.C. 6295(o)(4), which prohibits DOE from prescribing a standard that interested person have established by a preponderance of the evidence would likely result in the unavailability in the United States in any covered product type (or class) of performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of DOE's finding. (CEI Petition, No. 0006 at p. 4) CEI stated that despite this prohibition, it appears that dishwasher cycle times have been impaired by the DOE standards and that many machines with shorter cycle times are no longer available. (*Id.*)

In its petition, CEI suggested a cycle time of one hour as the defining characteristic for the suggested new product class, because one hour is substantially below the cycle times for all current products on the market. (CEI Petition, No. 0006 at p. 5) CEI stated that energy efficiency standards for current products would therefore not change with the addition of the new product class, and that no backsliding would occur for the energy standards already in place. (*Id.*) Specifically, 42 U.S.C. 6295(o)(1) (commonly referred to as the ''anti-backsliding provision'') prohibits DOE from prescribing a standard that increases the maximum allowable energy use, or in the case of showerheads, faucets, water closets or urinals, water use, or decreases the minimum required energy efficiency, of a covered product. CEI did not suggest specific energy and water requirements for this new product class, stating that these details could be determined during the course of the rulemaking. (CEI Petition, No. 0006 at p. 1)

On April 24, 2018, DOE published a notice of receipt of CEI's petition for rulemaking. 83 FR 17768 (April 2018 Notice of Petition for Rulemaking). DOE requested comments on the petition, as well as any data or information that could be used in DOE's determination whether to proceed with the petition.

*B. Summary of Public Comments*

In response to the April 2018 Notice of Petition for Rulemaking, DOE received a wide range of comments, including comments from an industry association and dishwasher manufacturers, a state agency and state officials, consumer organizations, utilities, energy efficiency advocates, and individuals. Comments both favored and opposed granting CEI's petition for rulemaking.

The Association of Home Appliance Manufacturers (AHAM) stated that at this time, a separate product class is not justified, because consumers already have access to shorter cycles, and that a new product class with less stringent standards would cause stranded investments and additional costs for manufacturers. (AHAM, No. 2233 at p. 1) AHAM indicated, however, that lengthening cycle time is a ''critical consumer welfare and policy issue . . . of enormous significance for future, possible DOE dishwasher energy conservation standards rulemakings.'' (AHAM, No. 2233 at p. 2) Danby, Sub-Zero, and GE Appliances expressed support for AHAM's comments. (Danby, No. 1785 at p. 2; Sub-Zero, No. 2235 at p. 1; GE Appliances, No. 1801 at p. 1)

The California Energy Commission (CEC) opposes the CEI petition, commenting that a short-cycle dishwasher does not meet the statutory requirements for establishing a separate product class and additionally that the anti-backsliding provision would prohibit establishing a less stringent standard for any such product class. (CEC, No. 2247 at p. 1) CEC commented that cycle times already exceeded one hour prior to the establishment of an energy conservation standard by Congress and that information provided by CEI does not demonstrate any causal relationship between cycle time and energy conservation standards. (CEC, No. 2247 at pp. 6–7) The State Attorneys General from Arizona, Arkansas, Louisiana, Oklahoma, and South Carolina (State Attorneys General) commented in support of the petition stating that it would provide improved

[1] A notation in this form provides a reference for information that is in the docket of this rulemaking (Docket No. EERE–2015–BT–STD–0005). *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005*. This notation indicates that the statement preceding the reference is included in document number 6 in the docket at page 1.

consumer choice. (State Attorneys General, No. 2238 at p. 1)

The California Investor Owned Utilities [2] (CA IOUs) recommended DOE reject the petition, commenting that a separate product class for dishwashers with a shorter cycle is not permissible under statute and that longer cycle time is not being driven by energy conservation standards. (CA IOUs, No. 1800 at pp. 1 and 3)

The Consumers Union recommended that DOE deny the CEI petition for rulemaking, stating that there is no need for a separate product class and such a product class would risk undermining the current energy efficiency standard. (Consumers Union, No. 2250 at p. 1) The Sixty Plus Association supports the CEI petition to reduce the cycle time of dishwashers to reduce the costs associated with the time and electricity it takes to perform the current dishwasher cycles.[3] (Sixty Plus, No. 2230 at p. 1)

The Northwest Energy Efficiency Alliance (NEEA) stated that based on the data it submitted, DOE cannot conclude that even a small number of households would place any value on a dishwasher that can wash dishes in an hour or less. (NEEA, No. 1789–1 at p. 2) The Appliance Standards Awareness Project, Consumer Federation of America, Natural Resources Defense Council, and Northeast Energy Efficiency Partnerships (Joint Commenters); Earthjustice and Sierra Club; and the Northwest Power and Conservation Council (NPCC) recommended that DOE deny the CEI petition, stating that a product class for such dishwashers is not justified under 43 U.S.C. 6295(q) and would violate EPCA's anti-backsliding provision. (Joint Commenters, No. 2237 at p. 1; Earthjustice and Sierra Club, No. 2245 at pp. 1–2; NPCC, No. 2232 at p. 1) NPCC stated that a separate product class as requested by CEI would increase uncertainty in utility resource planning. (NPCC, No. 2232 at p. 1) The Joint Commenters stated that the energy conservation standards have not been the main driver in increased cycle times, noting that based on the data submitted by CEI, the greatest increase in cycle time occurred during a long period when no new standards were adopted. (Joint Commenters, No. 2237 at p. 3) The Joint Commenters added that the increase in cycle time was likely the result of manufacturer design choices intended to improve washing performance, detergent changes, and consumer demand for quiet and efficient machines. (Joint Commenters, No. 2237 at p. 3)

DOE also received numerous comments from individuals that addressed a wide range of issues.[4] Some of the comments explicitly supported CEI's petition for rulemaking. Other comments expressed general disapproval with energy efficiency standards for appliances, dissatisfaction with the current cycle times and cleaning performance of dishwashers as compared to previously available models, as well as support for energy efficient dishwashers. One individual stated that the petition has not demonstrated that cycle time is a utility feature that warrants a separate product class. The commenter stated that a review of manufacturer literature shows that at least eight appliance manufacturers offer consumer-selected cycles with a duration of less than one hour and that having the option to select at least one cycle with a duration of an hour or less would seem to satisfy the petitioner's request. The commenter also expressed the view that standards for the product class requested by the petitioner would need to meet or exceed currently applicable dishwasher standards to satisfy EPCA's anti-backsliding provision. (McCabe, No. 0004 at 1–2)

## II. Authority To Establish a Separate Class of Dishwashers

In evaluating CEI's petition and proposing to establish a separate product class for dishwashers that wash and dry dishes in less than an hour, DOE has determined that under 42 U.S.C. 6295(q), dishwashers with a ''normal cycle'' time of less than one hour as described by CEI have a performance-related feature that other dishwashers do not have and that justifies a separate product class subject to a higher or lower standard than that currently applicable to dishwashers. In any rulemaking to establish energy conservation standards for such a product class, DOE would be required to consider EPCA's anti-backsliding provision at 42 U.S.C. 6295(o)(1). DOE addresses these issues below.

### *A. Separate Product Class—One-Hour Normal Cycle*

CEI petitioned DOE to establish a separate product class for dishwashers that have a cycle time of less than one hour from washing through drying. (CEI Petition, No. 0006 at p. 1) Under the current test procedure and energy conservation standards, dishwashers are tested and evaluated for compliance when operated on the ''normal cycle.'' Appendix C1, sections 2.6.1, 2.6.2, 2.6.3. ''Normal cycle'' is the cycle, including washing and drying temperature options, recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes, including the power-dry setting. Appendix C1, section 1.12. Manufacturers may add additional cycles to dishwashers, but those additional cycles are not tested. Although CEI's initial petition did not specify the cycle that would be limited to one hour under the separate product class, CEI provided information supplemental to its petition clarifying the request for a new product class for dishwashers for which the normal cycle is less than one hour.[5]

EPCA directs that when prescribing an energy conservation standard for a type (or class) of a covered product DOE must specify—

[A] level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if DOE determines that covered products within such a group—

(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) have a capacity or other such performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type.

In making a determination concerning whether a performance-related feature justifies the establishment of a higher or lower standard, DOE must consider such factors as the utility to the consumer of such a feature, and such other factors as DOE deems appropriate.

[2] The CA IOUs are the Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison.

[3] Sixty Plus Association also discussed the approved collection of information under Paperwork Reduction Act for the DOE Appliance Standards Program (OMB Control Number 1910–1400), which includes reporting requirements for manufacturers of dishwashers for the purpose of certifying compliance with the applicable standards. (Sixty Plus, No. 2230 at pp. 1–2) To the extent that establishment of a new product class for dishwashers would require a change in the current burden hours associated with compliance with the dishwasher energy conservation standards, DOE would address such change in a separate notice and provide additional opportunity for comment.

[4] Comments are available at *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=EERE-2018-BT-STD-0005.*

[5] See document ID EERE–2018–BT–STD–0005–0007 available on *http://www.regulations.gov.*

(42 U.S.C. 6295(q)(1))

In prior rulemakings, DOE has taken the view that utility is an aspect of the product that is accessible to the layperson and based on user operation, rather than performing a theoretical function. This interpretation has been implemented in DOE's previous determinations of utility through the value the particular feature brings to the consumer, rather than through analyzing more complicated design features or costs that anyone, including the consumer, manufacturer, installer, or utility companies may bear. DOE has determined that this approach is consistent with EPCA requiring a separate and extensive analysis of economic justification for the adoption of any new or amended energy conservation standard. 80 FR 13120, 13137 (Mar. 12, 2015); 81 FR 65720, 65752–65755 (Sept, 23, 2016). Under this approach, DOE determined that the window in an oven door was a ''feature'' justifying a different standard.[6] Similarly, DOE also determined that consumers may value other features such as the ability to self-clean,[7] size,[8] and configuration.[9] In contrast, DOE determined that water heaters using electric resistance technology did not merit a product class separate from water heaters using heat pump technology.[10] In both heat-pump and electric storage water heaters, the same utility (hot water) was provided by units using different technology.

In a rulemaking to amend standards applicable to commercial clothes washers, DOE determined that the ''axis of loading'' constituted a feature that justified separate product classes for top loading and front loading clothes washers. DOE also determined that ''the longer average cycle time of front-loading machines warrants consideration of separate [product] classes,''. 79 FR 74492, 74498 (Sept. 15, 2014). DOE stated that a split in preference between top loaders and front loaders would not indicate consumer indifference to the axis of loading, but rather that a certain percentage of the market expresses a preference for (*i.e.,* derives utility from) the top-loading configuration. DOE further noted that separation of clothes washer equipment classes by location of access is similar in nature to the equipment classes for residential refrigerator-freezers, which include separate product classes based on the access of location of the freezer compartment (*e.g.,* top mounted, side-mounted, and bottom-mounted). The location of the freezer compartment on these products provides no additional performance-related utility other than consumer preference. In other words, the location of access itself provides distinct consumer utility. *Id.* at 79 FR 74499. DOE also reasoned that top-loading residential clothes washers are available with the same efficiency levels, control panel features, and price points as front-loading residential clothes washers, and that given these equivalencies, purchase of top loaders indicates a preference among certain consumers for the top-loading configuration, *i.e.,* the top-loading configuration provides utility to those customers preferring one configuration over another, with all other product attributes being equal. *Id.*

DOE acknowledged that its determination of what constitutes a performance-related feature justifying a different standard could change depending on the technology and the consumer, and that as a result, certain products may disappear from the market entirely due to shifting consumer demand. DOE determines such value on a case-by-case basis through its own research as well as public comments received, the same approach that DOE employs in all other parts of its energy conservation standards rulemaking. (80 FR 13120, 13138, Mar. 12, 2015).

DOE applies this same approach to dishwashers in this proposed rule. Specifically, data provided by CEI indicate that dishwasher cycle times have increased significantly, from an average cycle time of 69 minutes in 1983 (the first year data was submitted) to 140 minutes in 2018. (CEI Petition, No. 0006, supporting data). In addition, while some consumers commented that they were not concerned with a shorter cycle time, a significant number of consumers expressed dissatisfaction with the amount of time necessary to run their dishwashers. (See docket for this rulemaking at *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005*). The data and comments from dissatisfied consumers indicate that for many consumers, there is a utility in shorter cycle times to clean a normally-soiled load of dishes. Based on all of the comments, data and information received, DOE concludes, similar to its conclusion with respect to clothes washers, that cycle time for dishwashers is a performance-related feature for purposes of 6295(q) that justifies a higher or lower standard than that applicable to other dishwasher product classes. The average cycle time of 69 minutes specified in CEI's data for 1983 is just slightly longer than the 60 minutes offered in its petition, supporting DOE's proposal to establish a product class for dishwashers with a normal cycle of less than 1 hour. DOE seeks comment, however, on whether the one hour timeframe should be adjusted to avoid inadvertently eliminating dishwashers with short cycle times of, for example, 70–75 minutes or some other timeframe shorter than the current 140 minute average cycle time represented in CEI's data for 2018, so that DOE may consider whether a different cycle time is appropriate in the final rule.

*B. EPCA's Anti-Backsliding Provision*

In any rulemaking to establish standards for a separate product class as described in CEI's petition, DOE must consider EPCA's general prohibition against prescribing ''any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.'' (42 U.S.C. 6295(o)(1); the ''anti-backsliding provision'') The anti-backsliding provision must be read in conjunction with the authority provided to DOE in 42 U.S.C. 6295(q) to specify ''*a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type or class . . .*'' if the Secretary determines that covered products within such group consume a different type of energy or have a capacity or other performance-related feature that justifies ''*a higher or lower standard from that which applies (or will apply) to other products within such type (or class).*'' 42 U.S.C. 6295(q) (emphasis added). EPCA explicitly acknowledges, therefore, that product features may arise that require designation of a product class with a standard lower than that applicable to other product classes for that covered product.

Specifically, by using the present tense, ''a higher or lower standard than that which applies,'' EPCA authorizes DOE to reduce the stringency of the standard currently applicable to the products covered under the newly established separate product class. The applicability of this provision to current standards is further evidenced by the additional reference to standards that are not yet applicable (*i.e.,* standards

[6] 63 FR 48038, 48041 (Sept. 8, 1998).

[7] 73 FR 62034, 62048 (Oct. 17, 2008) (separating standard and self-cleaning ovens into different product classes).

[8] 77 FR 32037, 32319 (May 31, 2012) (creating a separate product class for compact front-loading residential clothes washers).

[9] 75 FR 59469 (Sept. 27, 2010) (creating a separate product class for refrigerators with bottom-mounted freezers).

[10] 74 FR 65852, 65871 (Dec. 11, 2009).

that ''would apply.'') If 42 U.S.C. 6295(q)(1) were only to operate in instances in which standards have not yet been established, there would be no need to separately indicate the applicability to future standards. Nor would there be any purpose to calling out the potential for higher or lower standards since there would not be any standards against which to measure that potential. In this manner, 42 U.S.C. 6295(q) authorizes DOE to reduce the stringency of a currently applicable standard upon making the determinations required by 42 U.S.C. 6295(q).

This reading of the statutory text recognizes that section 6295(q) of EPCA cannot be read to prohibit DOE from establishing standards that allow for technological advances or product features that could yield significant consumer benefits while providing additional functionality (*i.e.,* consumer utility) to the consumer. DOE relied on this concept when, in 2011, DOE established separate energy conservation standards for ventless clothes dryers, reasoning that the ''unique utility'' presented by the ability to have a clothes dryer in a living area where vents are impossible to install (*i.e.,* a high-rise apartment) merited the establishment of a separate product class. 76 FR 22454, 22485 (Apr. 21, 2011). Another example of this that DOE is just beginning to explore is network connectivity of covered products. *See* DOE's Smart Products RFI at 83 FR 46886 (Sept. 18, 2018). Network connectivity is a technology that has only recently begun to appear on the market. Moreover, it clearly has a desirable consumer utility and is a fast-growing feature of new models of covered products. However, network connectivity comes with attendant energy use. EPCA's anti-backsliding provision cannot be read to prohibit DOE from establishing standards that allow for covered products to be connected to a network simply because standards for those products were established prior to the time that network connectivity was even contemplated, and thereby eliminating the ability to implement this consumer-desired option. Similarly, for dishwashers, 42 U.S.C. 6295(q) authorizes DOE to establish standards for product features that provide consumer utility, such as shorter cycle times.

This interpretation is consistent with DOE's previous recognition of the importance of technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality to the consumer. 80 FR 13120, 13138 (Mar. 12, 2015); 81 FR 65720, 65752 (Sept. 23, 2016). In the proposed and supplemental proposed rule to establish standards for residential furnaces, DOE stated that tying the concept of feature to a specific technology would effectively ''lock-in'' the currently existing technology as the ceiling for product efficiency and eliminate DOE's ability to address such technological advances. *Id.*

Further, EPCA's anti-backsliding provision is limited in its applicability with regard to water use to four specified products, *i.e.,* showerheads, faucets, water closets, or urinals. DOE's existing energy conservation standard for dishwashers is comprised of both energy and water use components. As dishwashers are not one of the products listed in anti-backsliding provision with respect to water use, there is no prohibition on DOE specifying a maximum amount of water use for dishwashers that is greater than the existing standard without regard to whether DOE were to establish a separate product class for dishwashers as proposed in this proposed rule.

Finally, DOE recognizes that 42 U.S.C. 6295(o)(4) prohibits DOE from establishing standards that would result in the unavailability of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available at the time of the Secretary's finding. CEI makes the point that despite this prohibition, it appears that dishwasher cycle times have been impaired by the DOE standards and that many machines with shorter cycle times are no longer available. (CEI Petition, No. 0006 at p. 4) Section 6295(q) of EPCA authorizes DOE to set standards that recognize new technologies and product features, or in this case, features that are no longer available in the market. This reading of the statute is consistent with DOE's previous acknowledgement that its determination of what constitutes a performance-related feature justifying a different standard could change depending on the technology and the consumer utility, and that as a result, certain products may disappear from (or in the case of dishwashers, reappear in) the market entirely due to shifting consumer demand. This reading is also consistent with DOE's statements that DOE determines this value on a case-by-case basis through its own research as well as public comments received. (80 FR 13120, 13138, Mar. 12, 2015). In addition, once DOE makes a determination that a certain product attribute is a feature, DOE cannot later set a standard that would eliminate that feature.

## III. Conclusion

After reviewing CEI's petition and comments received on the petition, DOE has concluded it has legal authority to establish a separate product class as suggested by CEI pursuant to 42 U.S.C. 6295(q). DOE proposes to establish a separate product class for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.,* the normal cycle time) of less than one hour. DOE will consider energy conservation standards in a separate rulemaking, should such a product class (or classes) be established.

DOE also proposes to update the requirements for the dishwasher standards in 10 CFR 430.32(f). The current requirement includes a table that specifies the obsolete energy factor requirements for standard and compact dishwashers. This table was intended to be removed in a final rule for dishwasher energy conservation standards published on December 13, 2016, but was inadvertently retained by the amendatory instructions for paragraph (f). 81 FR 90072, 90120. DOE proposes to remove this table and add a new paragraph (f)(1)(iii) that specifies standard dishwashers with a normal cycle of 60 minutes or less are not currently subject to energy or water conservation standards. Additionally, DOE proposes to amend paragraphs (f)(1)(i) and (f)(1)(ii) to clarify the terms ''standard'' and ''compact'' and to include reference to the ANSI/AHAM DW–1–2010 standard, which is the current industry standard referenced in the dishwasher test procedure at 10 CFR part 430, subpart B, appendix C1.

## IV. Rulemaking Overview and Response to Comments

### *A. Rulemaking Overview*

DOE proposes to establish a separate product class or classes pursuant to 42 U.S.C. 6295(q)(1) for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.,* the normal cycle time) of less than one hour. DOE seeks comment on other potential time limits or utilities to delineate the separate product class. DOE also seeks comment on whether a short-cycle product class should be established for standard

dishwashers, compact dishwashers, or both.

Should DOE finalize a separate product class, DOE would then evaluate energy and water consumption limits to determine a standard for the product class that provides for the maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy. (42 U.S.C. 6295(o)(2)(A)) DOE will provide additional opportunity for comment on any proposed energy conservation standard for short-cycle dishwashers.

*B. Response to Comments*

AHAM commented that while it did not currently support a separate product class for dishwashers with cycle times of one hour or less, CEI raised a ''critical consumer welfare and policy issue'' that is of ''enormous significance for future, possible DOE dishwasher energy conservation standards rulemakings. AHAM noted that AHAM had raised lengthening cycle times for the normal cycle as a concern in a previous dishwasher rulemaking. (AHAM, No. 2333 at p. 2–4) Earthjustice and Sierra Club commented that DOE has already considered the utility of cycle time in prior rulemakings, finding that the current energy conservation standards do not impermissibly impact utility. (Earthjustice and Sierra Club, No. 2245 at p. 3)

AHAM cited U.S. Energy Information Administration's (EIA) *Residential Energy Conservation Survey* (*RECS*) 2015 data, that show over 80 percent of U.S. households use the normal cycle. (AHAM, No. 2333 at p. 3) Consumers Union cited its *Consumer Reports' 2017 Spring Dishwashers Survey* of 74,880 Consumer Reports members who purchased a new dishwasher between 2007 and 2017, in which it found: 87 percent of survey respondents reported that their most frequently used cycle was the either the ''Normal/Regular'' or ''Auto/Smart'' cycle, and 66 percent of respondents reported using the ''Normal/Regular'' cycle more than 50 percent of the time; only 6 percent of survey respondents reported that their most frequently used cycle was the ''Quick/Express/1-hour'' cycle; 27 percent of survey respondents reported using the ''Quick/Express/1-hour'' cycle at least some of the time, and the reported usage of the ''Quick/Express/1-hour'' cycle was similar to reported usage of other non-normal cycles such as ''Heavy Duty'' or ''Pots & Pans.'' (Consumers Union, No. 2250 at p. 2) In response to an inquiry from CEI, Consumers Union stated that it had not yet decided whether to publish the survey results and underlying methodology on which these numbers are based.

The Joint Commenters and NEEA cited data from the *Residential Building Stock Assessment* showing that there are two peaks in daily dishwasher use, one around breakfast time and a larger one around dinner time. (Joint Commenters, No. 2237 at p. 2; NEEA, No. 1789–2 at p. 2) Similarly, the CA IOUs stated that 55 percent of dishwashers were run after 5 p.m., 28 percent between 9 a.m. and 5 p.m., and 17 percent before 9 a.m., suggesting that cycle time does not have a significant impact on consumer utility. (CA IOUs, No. 1800 at p. 5) GE Appliances stated that data based on its Wi-Fi enabled dishwashers indicate that most consumers run the dishwasher in the evening after dinner time and that the average consumer waits approximately eight hours after the cycle is complete to unload the dishes, indicating that cycle time is not a primary concern for many consumers. (GE Appliances, No. 1801 at p. 2) Both NEEA and CA IOUs further stated that there did not appear to be any cases where multiple, consecutive loads were run, indicating that multiple loads are a relatively rare event and do not need to be accounted for. (NEEA, No. 1789–2 at p. 4; CA IOUs, No. 1800 at p. 5)

The Joint Commenters stated that if cycle time was highly valued by consumers, it would be expected that most dishwashers would consume as much energy and water as is allowed by the minimum standards in order to reduce cycle time as much as possible, but that data show that almost all dishwasher sales meet ENERGY STAR requirements. (Joint Commenters, No. 2237 at p. 6) Earthjustice and Sierra Club commented that in DOE's prior analyses, it identified technologies that could provide improved cycle times while still enabling the dishwasher to meet the energy conservation standard (*e.g.,* soil sensors and alternative drying technologies), and that if consumers were demanding shorter cycle times, such technologies would be widely adopted. (Earthjustice and Sierra Club, No. 2245 at pp. 3–4)

A significant number of consumers, by contrast, indicated dissatisfaction with the length of time the dishwasher took to clean dishes. (See docket for this rulemaking at *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005*.) Approximately a third of the more than 2,000 commenters responding to the RFI referenced the extensive length of time required for the dishwasher to run a normal cycle. One commenter stated that their ''new dishwasher takes 219 minutes to complete a cycle . . . far too long and the dishes don't seem to be as clean as with the old unit.'' (Ballard, No. 1827 p. 1) A number of commenters stated that they choose not to use their dishwasher because of the length of time it takes to clean dishes. One individual noted that they no longer own a dishwasher, and instead prefer to wash dishes by hand as it is ''faster than waiting the 2 to 4 hours for the washing cycle to complete,'' (Harvey, No. 2227 p. 1)), another commenter noted that they have ''resort[ed] to disposable plates and utensils due to current dishwasher specs'' including a ''run cycle [of] four hours,'' (Weingrad, No. 85 p. 1), while a third commenter stated that they stopped using their dishwasher because ''it takes so long . . . to do the job . . . and . . . raised the utilities so much that we can't afford to use them,'' (Cravens, No. 54 p. 1).

In response to commenters, DOE refers to its discussion in section II.A. on the utility of cycle time. As described, data provided by CEI indicates that dishwasher cycle times have increased significantly, from an average cycle time of 69 minutes in 1983 (the first year data was submitted) to 140 minutes in 2018. (CEI Petition, No. 0006, supporting data). In addition, while some consumers commented that they were not concerned with a shorter cycle time, a significant number of consumers commented to express dissatisfaction with the amount of time necessary to run their dishwashers. (See docket for this rulemaking at *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0005*.) Contrary to the assertions of some commenters that the available data on when dishwashers are run (*i.e.,* typically after breakfast or in the evening) suggest that cycle time is of little utility, a different interpretation could be that consumers already know that their dishwasher will take a long time to run, and therefore decide to wait and run it before bed and empty it in the morning, regardless of whether they would prefer to run it at a different time. The data and numerous comments from consumers dissatisfied with the length of time it takes to run their dishwasher indicate that for some significant percentage of consumers, there is a utility in shorter cycle times to clean a normally-soiled load of dishes.

Additionally, the data referenced by Consumers Union and AHAM do not indicate if and to what extent a segment of consumers relies on a reduced-time cycle for their typical dishwasher usage, or what percentage of consumers would rely on a reduced-time cycle if it were available in the ''normal cycle''. The

data submitted by Consumers Union nonetheless indicate that there is a segment of dishwasher consumers that rely on a reduced-time cycle as the ''most frequently used'' cycle and as the cycle used ''some of the time,'' suggesting that some portion of consumers finds utility in a reduced cycle time. What is not clear from the data is whether an even larger percentage of consumers would find such utility if the reduced cycle time were offered in the normal cycle.

The time-of-day data submitted by CA IOUs and NEEA do not indicate the cycle being chosen by consumers and do not indicate whether a segment of consumers chooses to operate dishwashers on reduced-time cycles. While commenters interpret the time-of-day data to show that a percentage of dishwasher use occurs when consumers may not be concerned with the length of the cycle, data also show that a percentage of dishwasher use occurs when length of cycle may be a concern (*e.g.,* use in late afternoon prior to dinner). In addition, the data may also suggest a different interpretation than that offered by commenters—*i.e.,* that the reason the time-of-day data show dishwasher use after breakfast or dinnertime is because consumers who might otherwise wash their dishes at a more convenient time are choosing to start the cycle early in the day, or wait until late in the day, because they already know their dishwasher will take a long time to operate.

Additionally, DOE does not find data indicating lack of consecutive dishwasher runs informative to its decision to propose a product class for short cycle dishwashers. The lack of consecutive runs does not indicate whether some consumers find utility in having a single load of dishes washed and dried in a shorter period of time. It also does not capture those consumers that may be unable to perform consecutive dishwasher runs because of the length of time it takes to perform a single run, requiring these consumers to rely on alternatives (*e.g.,* washing dishes by hand).

Commenters stated that in addition to the normal cycle, numerous dishwashers have a cycle that has a shorter cycle time. Consumers Union noted that the DOE test procedure requires testing of the normal cycle to meet the standards, but stated that manufacturers are free to add additional cycles that are not limited in energy and water consumption. (Consumers Union, No. 2250 at p. 2) The Joint Commenters pointed to several dishwashers on the market that advertise ''1-Hour,'' ''Turbo,'' and ''Short Wash'' cycles. (Joint Commenters, No. 2237 at pp. 1–2) AHAM commented that 86.7 percent of reported 2017 dishwasher shipments in a recent AHAM survey provided consumers with a cycle that can wash and dry the load in just over one hour. (AHAM, No. 2233 at p. 2) AHAM further commented that 96.5 percent of the reported shipments offering shorter cycles are ENERGY STAR-qualified, offering consumers energy and water efficiency on the normal cycle and the option to use a shorter cycle. (AHAM, No. 2233 at p. 3)

While dishwashers may offer reduced-time cycles, such cycles are not the normal cycle; these cycles are not recommended, as DOE currently defines the normal cycle, by the manufacturer for daily, regular, or typical use to completely wash a full load of normally soiled dishes including the power-dry feature. CEI stated that, based on a review of user manuals, manufacturers intend the quick cycles to be for lightly soiled dishes rather than normally soiled loads. For example, CEI reports that the GE model PDT846SSJSS dishwasher has an express cycle that, according to its manual, ''will quickly wash lightly soiled dishes.'' The model's normal cycle ''is meant for daily, regular, or typical use to completely wash a full load of normally soiled dishes. . . .'' The Frigidaire model FGCD2456QF1B has a Quick Wash cycle which is ''for lightly soiled dishes and silverware.'' The manuals for other models also describe their express cycles as not suitable for normally soiled dishes, and none of these models reportedly have cycles for everyday use for normally soiled dishes that take only an hour to run (drying time included). CEI, *Supplemental Information Regarding CEI's Petition for Rulemaking on a New Product Class of Fast Dishwashers* (March 28, 2018) (citations omitted). The CEI petition therefore requested that DOE establish a product class that would cover dishwashers with a cycle time, for the cleaning of a full load of normally soiled dishes, of less than one hour from washing through drying.

Consumer comment and survey results submitted by CEI indicate that some percentage of the market finds utility in a dishwasher that completely washes a full load of normally soiled dishes in a period of time less than that provided by the normal cycle of products currently offered. For these consumers, the utility of the dishwasher is not just the ability to have dishes cleaned in a short period of time, but that operation of the dishwasher as recommended by the manufacturer would provide such function. One commenter noted that their dishwasher ''takes about two and a half hrs [sic] at the quickest cycle'' and does not ''clean as well as [she] would like.'' (Buchter, No. 0295 at p. 1) Similarly, one commenter indicated that ''[t]here is the option to cycle [the dishwasher] for 1 hour but that's not the recommended or best cycle,'' (Zahorchak, No. 1028 at p. 1), and another added that while their dishwasher ''has shorter cycles . . . [of] 2½ hours,'' these cycles ''do not get the dishes clean,'' (Bowen, No. 2191 at p. 1).

## V. Request for Comments, Data and Information

In this rulemaking, DOE proposes to establish a separate product class for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.,* the normal cycle time) of less than one hour. To inform its consideration of the proposal and any future energy conservation standards for such dishwashers, DOE requests additional data, including shipments data, on the cycle time of the normal cycle of dishwashers (both standard dishwashers and compact dishwashers) currently on the market. DOE also requests data on the cycle time of reduced-time cycles currently offered on standard and compact dishwashers and corresponding shipments data, as well as the energy and water use of the reduced-time cycles. DOE requests comment on whether any current technologies could provide a ''normal'' wash and dry cycle in less than one hour and that would allow a dishwasher to comply with the current energy conservation standards, and whether such technologies are available for standard and compact dishwashers.

In its petition, CEI requested use of a one-hour limit on the cycle time to define the new product class of dishwashers. (CEI, No. 0006 at p. 5) CEI stated that it was requesting one hour as the defining characteristic for a new dishwasher class because this cycle time is substantially below the normal cycle time for all current products on the market. *Id.* DOE seeks comment on whether the 60 minutes offered by CEI in its petition or some other length of time is appropriate to delineate the short cycle product class.

To better understand the extent of the utility a short cycle would potentially provide consumers, DOE requests comment and data for each current product class on consumer use of reduced-time cycles as a percentage of individual consumer dishwasher use, the cycle time of the reduced-time

cycles selected, and the cycle time of the normal cycle of that dishwasher. DOE also requests information on the operating demands that may favor shorter cycle times. DOE also asks for data and information on how dishwashers with express or quick wash cycles operate and how those cycles compare to a ''normal cycle'' with regard to cleaning dishes.

If DOE were to establish a separate product class (or classes) for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.,* the normal cycle time) of less than one hour, DOE would then determine the maximum improvement in energy or water efficiency that is technologically feasible and economically justified, and would result in a significant conservation of energy, in order to establish an energy conservation standard for such dishwashers. (42 U.S.C. 6295(o)) In analyzing the feasibility of potential energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration.

DOE seeks information on technologies currently used or that could be used to achieve cycles with reduced time. DOE is interested in information regarding their market adoption, costs, and any concerns with incorporating them into products (*e.g.,* impacts on consumer utility, potential safety concerns, manufacturing/production/implementation issues, *etc.*). DOE also seeks information on the range of efficiencies or performance characteristics that are associated with each technology option.

DOE also seeks input on the costs associated with incorporating particular technologies and/or design options. DOE requests information on the investments necessary to incorporate specific technologies and design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

DOE has identified a variety of issues on which it seeks input in this rulemaking to establish a separate product class or classes and the appropriate energy conservation standard for such a product class (or classes) should it be established. Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to dishwashers while remaining consistent with the requirements of EPCA.

## VI. Submission of Comments

DOE invites all interested parties to submit in writing by September 16, 2019, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of a separate product class or classes for dishwashers with a cycle time of the cycle recommended by the dishwasher manufacturer for daily, regular, or typical use to completely wash and dry a full load of normally soiled dishes (*i.e.,* the normal cycle time) of less than one hour. DOE also seeks comment on potential energy conservations standards for such a class of dishwashers should one be established. After the close of the comment period, DOE will review the public comments received and begin collecting data and conducting the analyses necessary to consider appropriate energy conservation standard levels.

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or postal mail. Comments and documents submitted via email, hand delivery, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not

secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email to *Dishwashers2018STD0005@ee.doe.gov* or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

## VII. Procedural Requirements

### *A. Review Under Executive Order 12866, ''Regulatory Planning and Review''*

This proposed rule is not a ''significant regulatory action'' under any of the criteria set out in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'').

### *B. Review Under Executive Orders 13771 and 13777*

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE has determined that this proposed rule is consistent with these Executive Orders. The proposed rule grants a petition submitted to DOE by the Competitive Enterprise Institute requesting that DOE establish a product class for dishwashers with ''normal cycle'' times of one hour or less from washing through drying. CEI asserted in its petition that ''dishwasher cycle times have become dramatically worse under DOE standards, and consumer satisfaction has dropped as a result.'' (CEI, No. 6 at p. 1) This proposed rule, if adopted, would establish the product class requested by CEI. DOE also seeks data to assist its determination of the appropriate standard levels for such product class in a subsequent rulemaking.

### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: *http://energy.gov/gc/office-general-counsel.* This proposed rule revises the Code of Federal Regulations to incorporate, without substantive change, statutorily-imposed definitional changes affecting coverage under current energy conservation standards, applicable timelines related to certain rulemaking

requirements, and related provisions prescribed by Public Law 115–78 and Public Law 115–115, along with a separate correction to reflect the current language found in the statute. This rulemaking grants a petition from CEI to establish a product class for dishwashers with a ''normal cycle'' of less than one hour from washing through drying. Appropriate standard levels would be established in a subsequent rulemaking. As a result, no economic impact is expected from the rulemaking.

*D. Review Under the Paperwork Reduction Act of 1995*

This rulemaking, which proposes to establish a product class for dishwashers with a ''normal cycle'' of less than one hour from washing through drying but does not set standards or establish testing requirements for such dishwashers, imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

Manufacturers of covered products generally must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including ceiling fans. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*E. Review Under the National Environmental Policy Act of 1969*

In this proposed rule, DOE proposes to establish a product class for dishwashers with a ''normal cycle'' of one hour or less from washing through drying. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would only establish a new product class for dishwashers, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

*F. Review Under Executive Order 13132, ''Federalism''*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

*G. Review Under Executive Order 12988, ''Civil Justice Reform''*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely

affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

*I. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*J. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''*

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

*K. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*L. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed rule, which would establish a product class for dishwashers with a ''normal cycle'' of one hour or less from washing through drying, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*M. Description of Materials Incorporated by Reference*

In this document, DOE proposes to incorporate by reference the industry standard published by ANSI/AHAM, titled ''Household Electric Dishwashers,'' ANSI/AHAM DW–1–2010. ANSI/AHAM DW–1–2010 is an industry-accepted standard to measure the energy and water consumption of residential dishwashers and is already incorporated by reference for the current dishwasher test procedure at 10 CFR part 430, subpart B, appendix C1. In this document, DOE proposes to incorporate by reference this industry consensus standard at 10 CFR 430.32(f), which specifies the energy conservation standards for compact and standard dishwashers, for the purpose of distinguishing the standard and compact product classes pursuant to the industry standard.

Copies of ANSI/AHAM DW–1–2010 may be purchased from AHAM at 1111 19th Street NW, Suite 402, Washington, DC 20036, 202–872–5955, or by going to *http://www.aham.org.*

## VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Incorporation by reference, and Small businesses.

Signed in Washington, DC, on June 28, 2019.

**Daniel R Simmons,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, DOE proposes to amend part 430 of title 10 of the Code of Federal Regulations as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

**§ 430.3 [Amended]**

■ 2. Section 430.3 paragraph (i)(2) is amended by adding the words ''§ 430.32 and'' immediately before the words ''appendix C1''.

■ 3. Section 430.32 is amended by revising paragraph (f) to read as follows:

**§ 430.32 Energy and water conservation standards and their compliance dates.**

* * * * *

(f) *Dishwashers.* (1) All dishwashers manufactured on or after May 30, 2013, shall meet the following standard—

(i) Standard size dishwashers (capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3) using the test load specified in section 2.7 of appendix C1 in subpart B of this part) shall not exceed 307 kwh/year and 5.0 gallons per cycle.

(ii) Compact size dishwashers (capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3) using the test load specified in section 2.7 of appendix C1 in subpart B of this part) shall not exceed 222 kwh/year and 3.5 gallons per cycle.

(iii) Standard size dishwashers with a ''normal cycle'', as defined in section 1.12 of appendix C1 in subpart B of this part, of 60 minutes or less are not currently subject to energy or water conservation standards.

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(2) [Reserved].

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[FR Doc. 2019–14545 Filed 7–15–19; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2019–0552]**

**RIN 1625–AA00**

## Safety Zone; Ohio River, Portsmouth, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Ohio River from Mile Marker (MM) 355.8 to MM 356.8. This action is necessary to provide for the safety of life on these navigable waters near Portsmouth, OH, during a firework display on September 1, 2019. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless otherwise authorized by the Captain of the Port Ohio Valley or designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 15, 2019.

**ADDRESSES:** You may submit comments identified by docket number USCG–2019–0552 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST3 Wesley Cornelius, Waterways Management, MSU Huntington, U.S Coast Guard; telephone 304–733–0198, email *Wesley.P.Cornelius@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background, Purpose, and Legal Basis

On May 8, 2019, Hamburg Fireworks notified the Coast Guard that it would be conducting a firework display from the Kentucky Shoreline to commemorate the Labor Day from 10 p.m. to 10:30 p.m. on September 1, 2019. Hazards from the fireworks display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers and other debris. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within the Safety Zone.

The purpose of this rulemaking is to ensure the safety of persons on these navigable waters within half of a nautical mile up-river and down-river of the launch site before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under the authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary safety zone from 10 p.m. to 10:30 p.m. on September 1, 2019. The safety zone would cover all navigable waters from Ohio River Mile Marker (MM) 355.8 to MM 356.8. The duration of the regulation is intended to ensure the safety of life on these navigable waters before, during, and after the scheduled regatta. No person would be permitted to enter the area without obtaining approval from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### IV. Regulatory Analyses

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

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

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

This regulatory action determination is based on size, location, and duration of the safety zone. The safety zone will be enforced on a small area of the Ohio River from 10 p.m. to 10:30 p.m. on September 1, 2019. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

#### *B. Impact on Small Entities*

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSE**S) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 0.5 hours that would prohibit entry from Ohio River MM 355.8 to MM 356.8. Normally such actions are 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov*. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice*.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**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 is proposing to amend 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. Add § 165.T08–0552 to read as follows:

### § 165.T08–0552 Safety Zone; Ohio River, Portsmouth, OH

(a) *Location.* The following area is a safety zone: All navigable waters of the Ohio River from Mile Marker (MM) 355.8 to MM 356.8 near Portsmouth, OH.

(b) *Period of enforcement.* This section will be enforced from 10 p.m. through 10:30 p.m. on September 1, 2019.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or the COTP's designated representative.

(2) To seek permission to enter the temporary zone, contact the COTP or the COTP's designated representative. The COTP or designated representative may be contacted on VHF Channel 13 or 16 or at 1–800–253–7565. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

Dated: July 10, 2019.

**A. M. Beach,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2019–15102 Filed 7–15–19; 8:45 am]

**BILLING CODE 9110–04–P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3050

**[Docket No. RM2019–8; Order No. 5145]**

### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Three). This document informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 19, 2019.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

On July 9, 2019, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Three.

### II. Proposal Three

*Background.* Proposal Three relates to the methodology used to distribute enhanced payments made under the PRIME agreement. Petition, Proposal Three at 1. PRIME is an international agreement among approximately 141 designated postal operators working together in the tracked packet area. *Id.* n.1. Under PRIME, designated postal operators provide each other with enhanced payments, in addition to the basic per item payment, for the timely return of scans. *Id.*

The Postal Service used a new methodology to distribute these PRIME enhanced payments in its most recent International Cost and Revenue Analysis (ICRA).[2] In the FY 2018 Annual Compliance Determination, the Commission accepted the Postal Service's distribution of the payments but determined that the Postal Service's revised methodology ''must be thoroughly reviewed by the Commission and stakeholders through a docketed proceeding before it can be used in future ACRs.'' [3] Accordingly, the Commission directed ''the Postal Service to file a petition for the initiation of a proceeding to review this proposed change in analytical principles within 90 days'' of the issuance of the FY 2018 ACD. *Id.*

*Proposal.* The Postal Service's proposal seeks to revise the methodology used to distribute PRIME enhanced payments. Under the existing methodology, PRIME costs are distributed entirely to First-Class Package International Service (FCPIS) because the costs are treated as an ''indistinguishable aggregate.'' Petition, Proposal Three at 1.

The Postal Service reports that it is now possible to distribute PRIME costs across products and between Negotiated Service Agreement (NSA) and non-NSA FCPIS. *Id.* This is accomplished by making use of the ''UX'' key for tracked mail in the System for International Revenue and Volume, Outbound (SIRVO). *Id.* at 3. As a result, Proposal Three expands the distribution of PRIME costs beyond FCPIS. *Id.*

*Rationale and impact.* The Postal Service states that the current methodology ''does not take advantage of the additional information'' provided by the UX key for tracked mail in SIRVO. *Id.* The Postal Service reports that the existing methodology allocates all PRIME costs to the non-NSA FCPIS settlements and unitizes those charges based on non-NSA volumes. *Id.* The Postal Service concludes that ''[t]his essentially set the unitized PRIME payments too high.'' *Id.* Proposal Three seeks to distribute these amounts ''based on proportions of UX across products and between NSA and non-NSA FCPIS.'' *Id.*

The impact of Proposal Three is that costs are shifted away from FCPIS to Outbound Single-Piece First-Class Mail, Priority Mail Express International, International Priority Airmail (IPA), International Direct Sacks—M-Bags, and associated Outbound NSAs. *Id.* at 4.

### III. Notice and Comment

The Commission establishes Docket No. RM2019–8 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Three no later than August 19, 2019. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. RM2019–8 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Three), filed July 9, 2019.

2. Comments by interested persons in this proceeding are due no later than August 19, 2019.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2019–15031 Filed 7–15–19; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3050

**[Docket No. RM2019–9; Order No. 5144]**

### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Four). This document informs the public of the filing, invites

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Three), July 9, 2019 (Petition).

[2] Docket No. ACR2018, USPS–FY18–NP2—FY 2018 International Cost and Revenue Analysis (ICRA) Report (Revised 2/11/19), February 11, 2019 (February 11 ICRA).

[3] Docket No. ACR2018, Annual Compliance Determination, April 12, 2019, at 105 (FY 2018 ACD).

public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 26, 2019.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

On July 9, 2019, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Four.

## II. Proposal Four

*Background.* The Postal Service seeks to modify the costing methodology for the non-negotiated service agreement (NSA) portions of International Priority Airmail (IPA) and International Surface Airlift (ISAL) products. Petition, Proposal Four at 1. The Postal Service states that Proposal Four relates to the Commission's directive in the FY 2018 Annual Compliance Determination Report (FY 2018 ACD) for the Postal Service to ''consider the proposed change in analytical principles for PRIME enhanced payments, to ensure that the proposed distribution does not allocate . . . NSA-specific costs to the non-NSA IPA product.'' [2] The Postal Service notes that although the FY 2018 ACD directive focused on IPA product, ISAL is calculated in a parallel manner. Petition, Proposal Four at 1. As such, the Postal Service proposes changes to the costing methodology for both the IPA and ISAL products. *Id.*

The Postal Service states that the current International Cost and Revenue Analysis (ICRA) model treats the non-NSA and NSA portions of IPA and ISAL as a single product (Total IPA and Total ISAL, respectively). *Id.* It is therefore unable to estimate the costs of the non-NSA portions of these products. *See id.* at 2–3.

*Proposal.* The Postal Service proposes to replace the Total IPA and Total ISAL data in its System for International Revenue and Volume, Outbound (SIRVO) sampling system. *Id.* at 3. The new SIRVO data would be input to the ICRA model with only the non-NSA portion of the IPA and ISAL product. *Id.* The previous module calculations would be removed, the model would be rerun, and terminal dues would be re-benchmarked to the General Ledger amounts. *Id.*

*Rationale and impact.* As the Commission noted in the FY 2018 ACD, the Postal Service's current methodology attributes too many costs to the non-NSA portion of IPA. FY 2018 ACD at 106–107. The Postal Service asserts that isolating the non-NSA portion of SIRVO for both IPA and ISAL will avoid attribution of NSA settlement expenses to the non-NSA portion of both products in the ICRA model. Petition, Proposal Four at 4.

The Postal Service states that the procedures proposed would more accurately reflect reduced unit costs and improved cost coverage for the non-NSA portions of both IPA and ISAL. *Id.* It also asserts that had the proposed methodology changes been in effect for FY 2018, revenues from the non-NSA portion of IPA would have covered its costs. *Id.*

## III. Notice and Comment

The Commission establishes Docket No. RM2019–9 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Four no later than August 26, 2019. Pursuant to 39 U.S.C. 505, the Commission designates Katalin K. Clendenin as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. RM2019–9 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Four), filed July 9, 2019.

2. Comments by interested persons in this proceeding are due no later than August 26, 2019.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2019–15030 Filed 7–15–19; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Four), July 9, 2019 (Petition).

[2] *Id.* at 2. Docket No. ACR2018, Annual Compliance Determination Report, April 12, 2019, at 107 (FY 2018 ACD).

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2019–0269, FRL–9996–58–Region 10]**

### Air Plan Approval; OR: 2018 Permitting Rule Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve revisions to the Oregon State Implementation Plan (SIP) submitted on December 11, 2018. The revisions update the SIP to allow for electronic public notice of proposed major stationary source permits, add references to stationary source sampling requirements, make use of plain language, and correct errors. The EPA reviewed the submitted revisions and proposes to find they are consistent with Clean Air Act requirements.

**DATES:** Comments must be received on or before August 15, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0269, 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, 1200 Sixth Avenue—Suite 155, 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.

**Table of Contents**



## I. Background

Each state has a State Implementation Plan (SIP) containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established by the EPA for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. Section 110 of the Clean Air Act (CAA) requires each state to periodically revise its SIP. As a result, the SIP is a living compilation of regulatory and non-regulatory elements that are updated to address federal requirements and changing air quality issues in the state.

Air quality regulations for the State of Oregon (''Oregon'' or ''the State'') are found in Chapter 340 of the Oregon Administrative Rules (OAR) and are generally implemented by the Oregon Department of Environmental Quality (ODEQ). On November 15, 2018, the State adopted new and revised air quality regulations that became effective November 16, 2018. Most of the adopted regulations implement Oregon's new, state-only air toxics permitting program known as Cleaner Air Oregon, established in OAR Chapter 340, Division 245. The State did not submit the Division 245 Cleaner Air Oregon regulations for SIP approval. However, some of the regulations adopted in the state rulemaking package also make changes to rules in the federally-approved SIP. On December 11, 2018, Oregon submitted these SIP-related changes to the EPA for approval. The changes account for electronic public notice of proposed major source permits, add references to stationary source sampling requirements, make use of plain language, and correct errors. For more details, please see the December 11, 2018 submission in the docket for this action.

## II. Evaluation of Submission

### *A. Division 12: Enforcement Procedure and Civil Penalties*

Division 12 contains enforcement procedures and civil penalties for violations of environmental regulations. In the submission, Oregon made minor edits to this division for clarity and to correct errors. For example, Oregon replaced the phrase ''pursuant to'' with ''under'' because the word has a plainer meaning. In addition, the State corrected references to the federally-defined term ''Best Available Control Technology.''

We reviewed the submitted changes and propose to find that Division 12 continues to provide the ODEQ with adequate authority to enforce the SIP as required by section 110 of the CAA and 40 CFR 51.230(b). Consistent with our prior action on October 23, 2015, we propose to approve the changes to this division only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP (80 FR 64346). We are not proposing to incorporate the changes by reference into the Code of Federal Regulations (CFR), however, because the EPA relies on its independent enforcement procedures and penalty provisions in bringing enforcement actions and assessing penalties under the CAA.

### *B. Division 200: General Air Pollution Procedures and Definitions*

Division 200 contains general procedures and definitions used in the State's air quality program. In the submission, Oregon made minor changes to clarify rule language throughout the definitions section of this division. The State also revised the definition of ''continuous monitoring systems'' to reference the Oregon Continuous Monitoring Manual, adopted in OAR 340–200–0035. Likewise, the State clarified the definitions of ''source test'' and ''volatile organic compounds'' to reference the Oregon Source Sampling Manual, adopted in OAR 340–200–0035. Oregon added a new definition for ''toxic air contaminant'' to account for the new, state-only air toxics permitting program, and made conforming changes to related definitions in Division 200. However, these revisions have limited impact on the federally-approved Oregon SIP because the revisions primarily relate to the new, state-only air toxics rules which are not part of the SIP and were not submitted to the EPA for approval.

Division 200 also includes key reference materials used throughout Oregon air quality rules. The submission revises citation dates for these reference materials. First, all references to federal requirements in the CFR now refer to the July 1, 2018 version. Second, all references to the Oregon Source Sampling Manual now refer to the November 2018 edition (also submitted for approval into the SIP).

We reviewed the submitted changes to Division 200 and propose to approve and incorporate them by reference into the Oregon SIP, except all references to ''toxic air contaminants'' and the state-only air toxics permitting program set forth in OAR Chapter 340, Division 245, because these provisions were not submitted to the EPA for approval. We note that the State's submitted update to reference the July 1, 2018 CFR was approved by the EPA in a prior action. Please see our recent rulemaking entitled ''Air Plan Approval; OR: Infrastructure Requirements for the 2015 Ozone Standard'' published on June 6, 2019 (84 FR 26347).

### *C. Division 209: Public Participation*

Division 209 contains rules to notify the public of certain permit actions and give the public an opportunity to participate in the permitting process. In the submission, Oregon removed the requirement to publish notice of draft major new source review (NSR) permits in the local newspaper and added the option to publish notice on a publicly-accessible website, along with the draft permit. These changes are consistent with recent EPA rules published on October 18, 2016 and intended to modernize the process (81 FR 71613).

Oregon also made updates to this division to address the new, state-only air toxics permitting program. However, Oregon submitted these public participation rule changes only to the extent the rules apply to (1) pollutants for which NAAQS have been

established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of part C of title I of the CAA.

We most recently approved revisions to Division 209 on October 11, 2017 (82 FR 47122). We found that Division 209 was consistent with the CAA and regulatory requirements for public notice of new source review actions in 40 CFR 51.161 Public availability of information, 40 CFR 51.165 Permit requirements, and 40 CFR 51.166 Prevention of significant deterioration of air quality. After reviewing the submitted changes, we find that Oregon's public participation rules continue to meet the CAA and the EPA's NSR public notice requirements.

*D. Division 216: Air Contaminant Discharge Permits*

Oregon's Air Contaminant Discharge Permit (ACDP) program is both Oregon's federally-enforceable non-title V state operating permit program, and the administrative mechanism used to implement the notice of construction and NSR programs. There are six types of ACDPs under Oregon's rules: Construction, General, Short Term Activity, Basic, Simple, and Standard. In the submission, Oregon made changes to this division to use plain language, clarify requirements, and reference the new, state-only air toxics permitting program. Oregon also revised the applicability and jurisdiction section of this division to spell out that a source may not continue to operate if the source's ACDP expires, or is terminated, denied, or revoked. In the ACDP application requirements section, Oregon made changes to require that sources seeking new or renewed permits consider the lead time the ODEQ needs to process and issue permits and apply earlier in the process. Oregon also set application renewal deadlines and clarified the required contents of applications.

Certain SIP-approved rules in Division 216 are used to implement both the SIP-approved permitting programs and the new, state-only air toxics permitting program. In the submission, Oregon made clear that the State requested approval of the submitted changes to Division 216 for purposes of SIP permitting only.[1] We reviewed the submitted changes and find that the program remains consistent with section 110 of the CAA and EPA's implementing regulations.

*E. Volume I: Source Sampling Manual*

The Oregon Source Sampling Manual contains procedures for measuring and sampling exhaust gas streams from stationary sources in accordance with the requirements of Oregon's air quality rules in OAR Divisions 200 through 268. We most recently approved changes to the Source Sampling Manual on October 11, 2017 (82 FR 47122). Since then, Oregon updated Volume I of the manual to account for the new, state-only air toxics permitting program and made clarifications and corrections throughout the manual. For example, the State clarified that sources must notify the ODEQ of all source sampling projects, whether they are required by the State or not, if a source seeks to rely on the test as evidence in an enforcement case or to demonstrate compliance with non-delegated federal requirements. Oregon also made clear in the manual that complex source testing programs may require 45 days or more for protocol approval by the ODEQ.

Oregon revised the sample replication section of Volume I to state that unless otherwise specified by permit, state rule, federal regulation, or ODEQ letter, each source test must consist of at least three test runs, and the emission results are required to be reported for each run individually and as the arithmetic average of all valid test runs. Oregon revised the sample postponement and stoppages section of Volume I to clarify that postposing a test run in progress because the source is not able to comply with a control equipment standard is not acceptable. Oregon specified that one bound copy of the source test report must be submitted within 30 days following field work, and an electronic version of the report may be submitted, in addition to the bound copy.

We reviewed the submitted changes and find that Volume I of the Source Sampling Manual remains consistent with 40 CFR part 51, appendix M—Recommended Test Methods for State Implementation Plans and 40 CFR part 60, appendix A—Test Methods, and appendix B—Performance Specifications, for purposes of the emission limits and requirements approved into the SIP.

## III. Proposed Action

The EPA proposes to approve, and incorporate by reference into the Oregon SIP, the submitted changes to the following sections of the Oregon Administrative Rules (OAR) Chapter 340, state effective November 16, 2018:

- Division 200 General Air Pollution Procedures and Definitions (0020, 0035);
- Division 209 Public Participation (0020, 0030, 0040, 0050); and
- Division 216 Air Contaminant Discharge Permits (0020, 0030, 0040, 0090, 8020).[2]

The EPA also proposes to approve, but not incorporate by reference, the submitted changes to the following sections, state effective November 16, 2018:

- Division 12 Enforcement Procedure and Civil Penalties (0030, 0053, 0054, 0135, 0140), only to the extent the rules relate to enforcement of the requirements contained in the Oregon SIP; and
- ODEQ Source Sampling Manual, Volume I, 2018 Edition, only for purposes of the emission limits and requirements approved into the SIP.

## IV. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits the ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

## V. Incorporation by Reference

In this rule, the EPA is proposing to include, in a final 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

[1] Oregon submitted ACDP permitting rule revisions only to the extent that the rules apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under part C of title I of the CAA, but only for the purposes of meeting or avoiding the requirements of part C of title I of the CAA.

[2] Divisions 200, 209, and 216 are proposed to be approved only to the extent the rules apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

the provisions described in Section III. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** 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 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);
- 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 27, 2019.

**Chris Hladick,**

*Regional Administrator, Region 10.*

[FR Doc. 2019–14989 Filed 7–15–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R03–OAR–2019–0262; FRL–9996–73–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Requests and Maintenance Plans for Delaware County and Lebanon County 2012 Fine Particulate Matter Areas

**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 Commonwealth of Pennsylvania. On January 23, 2019 and February 11, 2019, respectively, the Pennsylvania Department of Environmental Protection (PADEP) submitted requests for EPA to redesignate to attainment of the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) the Delaware County and Lebanon County nonattainment areas (the Delaware and Lebanon Areas or the Areas). EPA is proposing to grant PADEP's requests and to determine that the Delaware and Lebanon Areas meet the 2012 annual $PM_{2.5}$ NAAQS, based on the most recent three years of certified air quality data. The effect of this proposed action, if finalized, would be to change the designation status of the Delaware and Lebanon Areas from nonattainment to attainment for the 2012 annual $PM_{2.5}$ NAAQS, thereby removing the requirement for a nonattainment new source review (NNSR) permitting program and stopping the sanctions clock associated with a finding of failure to submit NNSR updates for the 2012 annual $PM_{2.5}$ NAAQS. EPA is also proposing to approve PADEP's plans to ensure that the Delaware and Lebanon Areas continue to meet the 2012 $PM_{2.5}$ NAAQS through 2030 (maintenance plans) as revisions to the Pennsylvania SIP. The maintenance plans for the Delaware and Lebanon Areas include 2014, 2022, and 2030 motor vehicle emissions budgets (MVEBs) for mobile sources of $PM_{2.5}$ and nitrogen oxides ($NO_X$). Finally, EPA is proposing to find these 2014, 2022, and 2030 MVEBs for $PM_{2.5}$ and $NO_X$ adequate and to approve these MVEBs into the Pennsylvania SIP for transportation conformity purposes. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before August 15, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0262 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2181. Ms. Pino can also be reached via electronic mail at *pino.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:**



## I. What are the actions EPA is proposing?

EPA is taking several actions related to the redesignation of the Delaware and Lebanon Areas to attainment of the 2012 annual $PM_{2.5}$ NAAQS. EPA is proposing that the Delaware and Lebanon moderate nonattainment areas are attaining the 2012 annual $PM_{2.5}$ NAAQS. EPA is also proposing to approve Pennsylvania's 2012 annual $PM_{2.5}$ maintenance plans for the Delaware and Lebanon Areas as revisions to the Pennsylvania SIP. These maintenance plans include MVEBs for $PM_{2.5}$ and $NO_X$ for the years 2014, 2022, and 2030. Further, EPA is also proposing to find that Pennsylvania meets the requirements for redesignation of the Delaware and Lebanon Areas to attainment of the 2012 annual $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to grant Pennsylvania's request to change the designation of the Delaware and Lebanon Areas from nonattainment to attainment of the 2012 annual $PM_{2.5}$ NAAQS. Finally, EPA is proposing to find the 2014, 2022, and 2030 MVEBs for $PM_{2.5}$ and $NO_X$ adequate and is proposing to approve these MVEBs into the Pennsylvania SIP for transportation conformity purposes. The adequacy comment period for these MVEBs will begin upon publication of this Notice of Proposed Rulemaking (NPRM) with EPA's posting of the availability of Pennsylvania's maintenance plan submittal for the Delaware and Lebanon Areas on EPA's Adequacy website which can be found at *https://www.epa.gov/state-and-local-transportation.* Please see section V of today's rulemaking for further explanation of the MVEBs and the adequacy process.

## II. What is the background for these actions?

Particulate matter (PM) is the term for a mixture of solid particles and liquid droplets found in the air. Some particles, such as dust, dirt, soot, or smoke, are large or dark enough to be seen with the naked eye. Others are so small they can only be detected using an electron microscope. $PM_{2.5}$ is made of fine inhalable particles with diameters that are 2.5 micrometers and smaller. $PM_{2.5}$ can be emitted directly from a source, such as construction sites, unpaved roads, fields, smokestacks or fires. However, most $PM_{2.5}$ is formed in the atmosphere as a result of complex reactions. The chemicals that form this ''secondary'' $PM_{2.5}$, known as ''precursors'' are sulfur dioxide ($SO_2$), $NO_X$, volatile organic compounds (VOCs), and ammonia ($NH_3$). $PM_{2.5}$ precursors are pollutants emitted by a wide range of sources, such as power plants, industrial processes, and automobiles.

On December 14, 2012, EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS to provide increased protection of public health from fine particle pollution. 78 FR 3086 (January 15, 2013). In that action, EPA strengthened the primary annual $PM_{2.5}$ standard from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $\mu g/m^3$. An area is considered to be attainment for that NAAQS when the 3-year average of the annual arithmetic mean of the ambient air quality monitoring data collected at each monitor in the area does not exceed 12.0 $\mu g/m^3$. On December 18, 2014, the EPA Administrator signed a final action promulgating initial designations for the 2012 primary $PM_{2.5}$ NAAQS based on 2011–2013 air quality monitoring data for the majority of the United States. 80 FR 2206 (January 15, 2015). In that action, the Delaware Area, which consists of Delaware County, Pennsylvania, and the Lebanon Area, which consists of Lebanon County, Pennsylvania, were designated as moderate nonattainment areas for the 2012 annual $PM_{2.5}$ NAAQS. See 40 CFR 81.339.

On April 6, 2018, EPA published a ''finding of failure to submit'' required SIP elements for the 2012 annual $PM_{2.5}$ NAAQS for several nonattainment areas nationwide, including the Delaware and Lebanon Areas. See 83 FR 14759. EPA's finding of failure to submit, effective May 7, 2018, included a determination that Pennsylvania had not met its obligations for the NNSR permit program because Pennsylvania did not regulate emissions of VOCs and $NH_3$ as $PM_{2.5}$ precursors. Sanctions associated with this finding for the Delaware and Lebanon Areas will take effect on November 7, 2019, unless EPA fully approves the Pennsylvania's redesignation requests by November 7, 2019. As NNSR is not required in attainment areas, upon final redesignation of the Delaware and Lebanon Areas to attainment, the NNSR updates will no longer be required for the Areas, thus nullifying the findings of failure to submit and stopping the sanctions clock.

## III. What are the criteria for redesignation to attainment?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of title I of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has

provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum);
2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 (Nichols memorandum); and
4. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation memorandum, September 17, 1993 (Shapiro memorandum).

These memoranda are available in the docket for this rulemaking action, available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2019–0262.

## IV. What is EPA's analysis of Pennsylvania's redesignation request for the Delaware and Lebanon Areas?

EPA is proposing to redesignate the Delaware and Lebanon Areas to attainment for the 2012 annual $PM_{2.5}$ NAAQS and to approve Pennsylvania's related maintenance plans. The basis for EPA's actions is as follows:

### A. Have the Delaware and Lebanon Areas attained the 2012 annual $PM_{2.5}$ NAAQS?

To redesignate an area from nonattainment to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). For $PM_{2.5}$, an area is attaining the 2012 annual $PM_{2.5}$ NAAQS if it meets the standard, as determined in accordance with 40 CFR 50.13 and appendix N of 40 CFR part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the 2012 annual $PM_{2.5}$ NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, must be less than or equal to 12.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS) database.

On December 13, 2016, EPA determined that the Delaware Area first attained the 2012 annual $PM_{2.5}$ NAAQS based on 2013–2015 ambient air quality monitoring data. See 81 FR 89868 and 82 FR 8499. On March 6, 2018, EPA determined that the Lebanon Area first attained the 2012 annual $PM_{2.5}$ NAAQS based on 2014–2016 ambient air quality monitoring data. See 83 FR 9435. These determinations of attainment, or ''clean data determinations'' suspended certain planning requirements for the Areas, including the requirement to submit an attainment demonstration and associated reasonably available control measures (RACM), including reasonable available control technology (RACT), a reasonable further progress (RFP) plan, and contingency measures for failure to attain or meet RFP. These requirements are suspended for as long as the Areas continue to meet the 2012 annual $PM_{2.5}$ NAAQS. When the Areas are redesignated to attainment, the requirements are permanently discharged.

There are two ambient air quality monitors in the Delaware Area and one in the Lebanon Area. EPA reviewed the certified, quality assured/quality controlled $PM_{2.5}$ monitoring data for 2015–2017 from the monitors in the Delaware and Lebanon Areas and determined that the design values are less than or equal to 12.0 $\mu g/m^3$, and therefore the areas continue to meet the 2012 annual $PM_{2.5}$ NAAQS. In addition, EPA evaluated preliminary 2016–2018 monitoring data for all three monitors, which also shows continued attainment of the 2012 annual $PM_{2.5}$ NAAQS. Therefore, EPA is proposing to determine that the Delaware and Lebanon Areas are attaining the 2012 annual $PM_{2.5}$ NAAQS. This proposed determination is based on the most recent three years of complete, certified and quality-assured data, which is for the 2015–2017 monitoring period. The monitoring data is summarized in Tables 1 and 2 and is also available in the docket for this rulemaking action available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2019–0262.

TABLE 1—2013 TO 2018 ANNUAL MEANS AT DELAWARE COUNTY AND LEBANON COUNTY MONITORS

| Area/county | Monitor ID | Annual means in $\mu g/m^3$ | | | | | |
|---|---|---|---|---|---|---|---|
| | | 2013 | 2014 | 2015 | 2016 | 2017 | Preliminary 2018 |
| Delaware | 42–045–0002 | 11.5 | 12.6 | 10.7 | 11.0 | 9.1 | 12.1 |
| Delaware | 42–045–0109 | (*) | (*) | 10.6 | 9.3 | 8.3 | 10.8 |
| Lebanon | 42–075–0100 | 11.2 | 12.7 | 11.2 | 9.7 | 9.3 | 8.8 |

* Monitor 42–045–0109 started operation on 1/1/2015. Therefore, it did not record data in 2013 and 2014.

TABLE 2—2015 TO 2018 ANNUAL DESIGN VALUES AT DELAWARE COUNTY AND LEBANON COUNTY MONITORS

| Area/county | Monitor ID | Annual design values in $\mu g/m^3$ | | | |
|---|---|---|---|---|---|
| | | 2013–2015 | 2014–2016 | 2015–2017 | Preliminary 2016–2018 |
| Delaware | 42–045–0002 | 11.6 | 11.5 | 10.3 | 10.7 |
| Delaware | 42–045–0109 | (*) | (*) | 9.4 | 9.4 |
| Lebanon | 42–075–0100 | ** 11.7 | 11.2 | 10.1 | 9.3 |

* Monitor 42–045–0109 started operation on 1/1/2015. Therefore, the 2013–2015 and 2014–2016 design values at this monitor are not valid because they do not meet EPA's completeness criteria in appendix N to 40 CFR part 50.

** The 2013–2015 design value at monitor 42–075–0100 is not valid because the 2015 data at that monitor does not meet EPA's completeness criteria in appendix N to 40 CFR part 50.

EPA has reviewed the ambient air quality monitoring data in the Delaware and Lebanon Areas, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on data recorded in the EPA AQS database, for the Delaware and Lebanon Areas for $PM_{2.5}$ nonattainment area from 2015 to 2017. EPA also considered preliminary data for 2018, which have not been certified, but which are consistent with the area's continued attainment.

All monitors in the Delaware and Lebanon Areas recorded complete data in accordance with criteria set forth by EPA in 40 CFR part 50, appendix N, where a complete year of air quality data comprises four calendar quarters, with each quarter containing data from at least 75 percent (%) capture of the scheduled sampling days. Available data are sufficient for comparison to the NAAQS.

*B. Has Pennsylvania met all applicable requirements of section 110 and part D of the CAA for the Delaware and Lebanon Areas and do the Delaware and Lebanon Areas have a fully approved SIP under section 110(k) of the CAA?*

In accordance with section 107(d)(3)(E)(v) of the CAA, Pennsylvania must meet all the requirements applicable to the Areas under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas). Under section 107(d)(3)(E)(ii) of the CAA, Pennsylvania's SIP revisions for the 2012 annual $PM_{2.5}$ NAAQS for the Delaware and Lebanon Areas must be fully approved under section 110(k) of the CAA. Section 110(k) of the CAA sets out the requirements for EPA's actions on SIP revision submittals.

The September 4, 1992 Calcagni memorandum describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–12466, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved but are not required as a prerequisite to redesignation. See CAA section 175A(c). *Sierra Club* v. *EPA,* 375 F .3d 537 (7th Cir. 2004). See also 68 FR 25418, 25424 and 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

In the case of the Delaware and Lebanon Areas, the base year emissions inventory was due prior to Pennsylvania's submittal of the complete redesignation requests for the Areas. Therefore, the base year inventories are applicable requirements. The attainment plans, including RACM/RACT, and contingency measures for failure to attain or meet RFP, were also due prior to Pennsylvania's submittal of complete redesignation requests for the Areas. However, as described in detail later in this rulemaking, clean data determinations for the Areas suspended these requirements for as long as the Areas continues to meet the 2012 annual $PM_{2.5}$ NAAQS. When the Areas are redesignated to attainment, these requirements are permanently discharged.

Pennsylvania Has Met the Section 110 General Sip Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) of the CAA include, but are not limited to the following: (1) Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a minor source permit program; (4) provisions for the implementation of part C requirements (referred to as ''prevention of significant deterioration'' or ''PSD''); (5) provisions for the implementation of part D requirements for nonattainment new source review (referred to as ''part D NNSR,'' ''NNSR,'' ''nonattainment NSR,'' or ''NSR'') permit programs; (6) provisions for air pollution modeling; and (7) provisions for public and local agency participation in planning and emission control rule development.

EPA believes that the section 110(a)(2) elements of the CAA not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Areas will still be subject to these requirements after it is redesignated. EPA concludes that section 110(a)(2) of the CAA and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request, and that section 110(a)(2) elements of the CAA not linked in the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (*i.e.,* for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174 (October 10, 1996); 62 FR 24826 (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio redesignation 65 FR 37879, 37890 (June 19, 2000) and in the Pittsburgh, Pennsylvania redesignation 66 FR 53099 (October 19, 2001).

EPA has previously approved provisions of Pennsylvania's SIP addressing section 110(a)(2) requirements under section 110(k) of the CAA, including provisions addressing $PM_{2.5}$. See 80 FR 26461 (May 8, 2015). These requirements are, however, statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Areas. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of Pennsylvania's $PM_{2.5}$ redesignation request.

Since PSD requirements will apply after redesignation, areas being redesignated must have an approved PSD program. Once the Delaware and Lebanon Areas are redesignated to attainment, Pennsylvania's PSD program, and not NNSR, will become effective in the Areas. Pennsylvania's PSD program, at 25 Pa. Code 127.81–127.83, is approved into the Pennsylvania SIP under CCA section 110(k). See 49 FR 33127 (August 21, 1984).

Areas seeking redesignation need not comply with the requirement that a NNSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without NNSR. A more detailed rationale for this is described in the Nichols memorandum. Nevertheless, Pennsylvania's NNSR program, codified in the Commonwealth's regulations at 25 Pa. Code 127.201 *et seq.,* is approved into the Pennsylvania SIP. See 77 FR 41276 (July 13, 2012).

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain

measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the $NO_X$ SIP Call,[1] amendments to the $NO_X$ SIP Call, May 14, 1999 (64 FR 26298), and March 2, 2000 (65 FR 11222), and the Cross-State Air Pollution Rule (CSAPR) [2] Update, 81 FR 74504 (October 26, 2016). However, a state's requirements under section 110(a)(2)(D) of the CAA are not linked to a particular nonattainment area's designation and classification in that state. The interstate transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation. See 65 FR 37890 (June 19, 2000), 66 FR 53094, 53099 (October 19, 2001), and 68 FR 25418, 25426–25427 (May 13, 2003).

EPA has reviewed the Pennsylvania SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation, namely a SIP-approved PSD program.

[1] On October 27, 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone''—commonly called the $NO_X$ SIP Call. The $NO_X$ SIP call requires the District of Columbia and 22 states to reduce emissions of $NO_X$ in order to reduce the transport of ozone and ozone precursors. EPA developed the $NO_X$ Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the $NO_X$ SIP Call. The $NO_X$ Budget Trading Program allowed electric generating units (EGUs) greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as ''large non-EGUs,'' to participate in a regional $NO_X$ cap and trade program. The $NO_X$ SIP call also established reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion (IC) engines. $NO_X$ is a $PM_{2.5}$ precursor.

[2] On July 6, 2011, EPA finalized CSAPR, limiting the interstate transport of emissions of nitrogen oxides $NO_X$ and $SO_2$ that contribute to harmful levels of $PM_{2.5}$ and ozone in downwind states. 76 FR 48208. CSAPR requires 28 states in the eastern United States to reduce $SO_2$, annual $NO_X$ and ozone season $NO_X$ emissions from fossil fuel-fired power plants that affect the ability of downwind states to attain and maintain compliance with the 1997 and 2006 $PM_{2.5}$ NAAQS and the 1997 ozone NAAQS. The CSAPR achieves these reductions through emissions trading programs. For more information on CSAPR, please see the ''Permanent and Enforceable Controls Implemented'' discussion of in section of IV.C. of this rulemaking.

Pennsylvania Has Met the Requirements of Subpart 1 of Part D

Subpart 1 of part D of the CAA sets forth the basic nonattainment plan requirements applicable to $PM_{2.5}$ nonattainment areas. Under section 172 of the CAA, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements.

EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not ''applicable'' for purposes of section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. See 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements ''have no meaning'' for an area that has already attained the standard. Id. This interpretation was also set forth in the Calcagni memorandum. EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to $PM_{2.5}$ in 40 CFR 51.1015 and suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9).[3] Courts have upheld EPA's interpretation of section 172(c)(1)'s ''reasonably available'' control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC* v. *EPA,* 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club* v. *EPA,* 314 F.3d 735, 744 (5th Cir. 2002).

As stated previously, EPA determined that the Delaware and Lebanon Areas have attained the 2012 $PM_{2.5}$ NAAQS in ''clean data determinations.'' See 81 FR 89868 (December 13, 2016), 82 FR 8499 (January 26, 2017), and 83 FR 9435 (March 6, 2018). Furthermore, as shown in section IV.A of this rulemaking notice, the Areas continue to attain the 2012 annual $PM_{2.5}$ NAAQS. Therefore, because attainment has been reached in the Delaware and Lebanon Areas, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Areas continues to attain the standard until redesignation.

Section 172(c)(2)'s requirement that nonattainment plans contain provisions promoting reasonable further progress toward attainment is also not relevant for purposes of redesignation because EPA has determined that the Delaware and Lebanon Areas have monitored attainment of the 2012 annual $PM_{2.5}$ NAAQS. In addition, because the Delaware and Lebanon Areas have attained the 2012 annual $PM_{2.5}$ NAAQS and are no longer subject to RFP requirements, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. The requirement under section 172(c)(3) was not suspended by EPA's clean data determination for the 2012 annual $PM_{2.5}$ NAAQS and is the only remaining requirement under section 172 of the CAA to be considered for purposes of redesignation of the Delaware and Lebanon Areas. Pennsylvania submitted 2011 base year emissions inventories for the Delaware and Lebanon Areas for the 2012 annual $PM_{2.5}$ NAAQS to EPA as SIP revisions on May 5, 2017 and September 25, 2017, respectively. The inventories cover the general source categories of point sources, nonroad mobile sources, area sources and on-road mobile sources and include emissions of $PM_{2.5}$ and its precursors, $NO_X$, $SO_2$, VOC, and $NH_3$. The inventories also included emissions of coarse particulate matter ($PM_{10}$). EPA approved them as revisions to the Pennsylvania SIP, under section 110(k) of the CAA, on July 3, 2018 (83 FR 31064).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified sources in an area, and section

[3] This regulation was promulgated as part of the 1997 $PM_{2.5}$ NAAQS implementation rule that was subsequently challenged and remanded in *NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), as discussed in Section IV.B of this notice. However, the Clean Data Policy portion of the implementation rule was not at issue in that case.

172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. As stated previously in this rulemaking action, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NNSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without NNSR. A more detailed rationale for this view is described in the Nichols memorandum. Nevertheless, Pennsylvania's SIP-approved NNSR program is codified in the Commonwealth's regulations at 25 Pa. Code 127.201 *et seq.* See 77 FR 41276 (July 13, 2012) (approving NNSR program into the SIP). Pennsylvania's PSD program, at 25 Pa. Code 127.81–127.83, is also approved into the Pennsylvania SIP. See 49 FR 33127 (August 21, 1984). Once the Delaware and Lebanon Areas are redesignated to attainment, Pennsylvania's PSD program, and not NNSR, will become effective in the Areas.

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section 110(a)(2) of the CAA. As noted previously, Pennsylvania SIP revisions meet the requirements of section 110(a)(2) of the CAA that are applicable for purposes of redesignation.

Section 175A of the CAA requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' In conjunction with its requests to redesignate the Areas to attainment, Pennsylvania submitted SIP revisions to provide for maintenance of the 2012 annual $PM_{2.5}$ NAAQS in the Delaware and Lebanon Area for at least 10 years after redesignation, through 2030. Pennsylvania is requesting that EPA approve these SIP revisions as meeting the requirement of section 175A of the CAA. Once approved, the maintenance plan for the Areas will ensure that the SIP for Pennsylvania meets the requirements of the CAA regarding maintenance of the 2012 annual $PM_{2.5}$ NAAQS for the Areas. EPA's analysis of the maintenance plan is provided in Section IV.D of this proposed rulemaking action.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability, which EPA promulgated pursuant to its authority under the CAA. EPA interprets the conformity SIP requirements [4] as not applicable for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. See *Wall* v. *EPA,* 265 F .3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Regardless, EPA approved Pennsylvania's transportation conformity SIP requirements on April 29, 2009 (74 FR 19541).

EPA concludes that Pennsylvania has met the requirements of subpart 1 of part D relevant for redesignation. Specifically, pursuant to section 110(k) of the CAA, EPA has approved Pennsylvania's base year inventories for the Areas into the Pennsylvania SIP.

## Pennsylvania Has Met the Requirements of Subpart 4 of Part D

A January 4, 2013, U.S. Court of Appeals for the District of Columbia Circuit decision [5] stated that EPA must implement $PM_{2.5}$ NAAQS pursuant to subpart 4 of part D of the CAA, which contains provisions specifically concerning $PM_{10}$ nonattainment areas. Section 189 in subpart 4 sets out the requirements for $PM_{10}$ and $PM_{2.5}$ nonattainment areas. Section 189(a) contains the SIP revision requirements for moderate $PM_{10}$ and $PM_{2.5}$ nonattainment areas, including the requirements for the state to submit an attainment demonstration, RACM (including (RACT) for stationary sources). Section 189(c) contains requirements for RFP, quantitative milestones and quantitative milestone reports.

As with the requirements of section 172(c), explained previously in this proposed rulemaking notice, the requirements of sections 189(a) and 189(c) are no longer considered to be applicable for purposes of redesignation as long as the Areas continue to attain the standard. Because attainment has been reached, no additional measures are needed to provide for attainment. EPA's clean data determinations for the Delaware and Lebanon Areas suspended the requirements for the state to submit an attainment demonstration, RACM and RACT, RFP, quantitative milestones, and quantitative milestone reports until such time as the Areas are redesignated to attainment, after which such requirements are permanently discharged. See 81 FR 89868 (December 13, 2016), 82 FR 8499 (January 26, 2017, and 83 FR 9435 (March 6, 2018).

EPA concludes that Pennsylvania has met the requirements of subpart 4 of part D relevant for redesignation. Specifically, pursuant to section 110(k) of the CAA, EPA has approved Pennsylvania's base year inventories for the Areas into the Pennsylvania SIP.

## Pennsylvania Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

At various times, Pennsylvania adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the $PM_{2.5}$ NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (see the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25418, 25426 (May 12, 2003) and citations therein).

As discussed previously, EPA has fully approved Pennsylvania's SIP for the Delaware and Lebanon Areas under section 110(k) for all requirements applicable under section 110 general SIP requirements, and subparts 1 and 4 of part D for purposes of redesignation under the 2012 annual $PM_{2.5}$ NAAQS. EPA has previously approved Pennsylvania's 2011 emissions inventories for the Delaware and Lebanon Areas as meeting the requirement of section 172(c)(3) of the CAA. See 83 FR 31064 (July 3, 2018). EPA also previously approved Pennsylvania's PSD program required under section 110 of the CAA. See 49 FR 33127 (August 21, 1984). No Delaware and Lebanon Areas SIP provisions are currently disapproved,

[4] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of MVEBs, such as control strategy SIPs and maintenance plans.

[5] *Natural Resources Defense Council* v. *EPA,* 706 F. 3d 428 (D.C. Cir. 2013).

conditionally approved, or partially approved. Therefore, the Administrator has fully approved the applicable requirements for the Delaware and Lebanon Areas under section 110(k) in accordance with section 107(d)(3)(E)(ii).

*C. Are the air quality improvements in the Delaware and Lebanon Areas due to permanent and enforceable emission reductions?*

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.

In making this demonstration for the Delaware and Lebanon Areas, Pennsylvania has calculated the change in emissions of $PM_{2.5}$ and its precursors between 2011, which is a year used to designate the Areas as nonattainment (*i.e.,* the base year), and 2014, which is one of the years the Areas monitored attainment (*i.e.,* the attainment year), as shown in Tables 3 and 4. The reduction in emissions in tons per year (tpy), and the corresponding improvement in air quality from 2011 to 2014 in the Areas can be attributed to a number of regulatory control measures that have been implemented in the Areas and contributing areas in recent years.

TABLE 3—2011 TO 2014 EMISSION REDUCTIONS IN DELAWARE COUNTY

[tpy]

| Sector | 2011 Base year | 2014 Attainment year | Difference 2011–2014 |
|---|---|---|---|
| **$PM_{2.5}$** | | | |
| Point | 1,497 | 624 | 873 |
| Area | 999 | 999 | 0 |
| Onroad | 179 | 136 | 43 |
| Nonroad | 122 | 97 | 25 |
| Total | 2,797 | 1,856 | 941 |
| **$SO_2$** | | | |
| Point | 4,976 | 1,924 | 3,052 |
| Area | 2,055 | 708 | 1,347 |
| Onroad | 31 | 31 | 0 |
| Nonroad | 3 | 2 | 1 |
| Total | 7,065 | 2,665 | 4,400 |
| **$NO_X$** | | | |
| Point | 7,642 | 5,181 | 2,461 |
| Area | 2,876 | 2,385 | 491 |
| Onroad | 5,643 | 4,652 | 991 |
| Nonroad | 1,124 | 783 | 341 |
| Total | 17,285 | 13,001 | 4,284 |
| **VOC** | | | |
| Point | 1,393 | 1,410 | −17 |
| Area | 6,779 | 7,396 | −617 |
| Onroad | 3,000 | 2,534 | 466 |
| Nonroad | 1,788 | 1,145 | 643 |
| Total | 12,960 | 12,485 | 475 |
| **$NH_3$** | | | |
| Point | 218 | 201 | 17 |
| Area | 206 | 179 | 27 |
| Onroad | 130 | 118 | 12 |
| Nonroad | 2 | 2 | 0 |
| Total | 556 | 500 | 56 |

TABLE 4—2011 TO 2014 EMISSION REDUCTIONS IN LEBANON COUNTY

[tpy]

| Sector | 2011 Base year | 2014 Attainment year | Difference 2011–2014 |
|---|---|---|---|
| **$PM_{2.5}$** | | | |
| Point | 81 | 120 | −39 |
| Area | 1,287 | 1,088 | 199 |
| Onroad | 92 | 87 | 5 |
| Nonroad | 62 | 47 | 15 |
| Total | 1,522 | 1,342 | 180 |
| **$SO_2$** | | | |
| Point | 278 | 229 | 49 |
| Area | 374 | 368 | 6 |
| Onroad | 11 | 11 | 0 |
| Nonroad | 2 | 1 | 1 |
| Total | 665 | 609 | 56 |
| **$NO_X$** | | | |
| Point | 690 | 549 | 141 |
| Area | 869 | 1,258 | −389 |
| Onroad | 2,937 | 3,131 | −194 |
| Nonroad | 616 | 505 | 111 |
| Total | 5,112 | 5,443 | -331 |
| **VOC** | | | |
| Point | 182 | 220 | −38 |
| Area | 5,924 | 6,657 | −733 |
| Onroad | 1,332 | 1,183 | 149 |
| Nonroad | 668 | 316 | 352 |
| Total | 8,106 | 8,376 | −270 |
| **$NH_3$** | | | |
| Point | 17 | 22 | −5 |
| Area | 3,843 | 2,251 | 1,592 |
| Onroad | 49 | 44 | 5 |
| Nonroad | 1 | 1 | 0 |
| Total | 3,910 | 2,318 | 1,592 |

In Delaware County, emissions of $PM_{2.5}$ and all precursors decreased from 2011 to 2014. In Lebanon County, while emissions of $PM_{2.5}$, $SO_2$, and $NH_3$ decreased, emissions of $NO_X$ and VOC increased from the 2011 base year to the 2014 attainment years. However, in Lebanon County, despite the modest increases in $NO_X$ and VOC emissions, total emissions of $PM_{2.5}$ and its precursors have decreased by over 1200 tpy. Emissions in Delaware County have decreased by over 10,000 tpy in the same time period. The reduction in emissions and the corresponding improvement in air quality over this period can be attributed to a number of regulatory control measures that the Delaware and Lebanon Areas and contributing areas have implemented in recent years, which are described further below.

Permanent and Enforceable Controls Implemented

Reductions in directly emitted fine particles and fine particle precursor emissions have occurred statewide and in upwind areas because of state and Federal emission control measures, with additional emission reductions expected to occur in the future. This section contains a discussion of permanent and enforceable measures that have been implemented in the Delaware and Lebanon Areas.

Stationary Source Measures

*$NO_X$ SIP Call:* On October 27, 1998 (63 FR 57356), EPA issued the $NO_X$ SIP Call requiring the District of Columbia and 22 states to reduce emissions of $NO_X$, a precursor to ozone pollution.[6] Affected states were required to comply with Phase I of the SIP Call beginning in 2004 and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the $NO_X$ SIP Call are permanent and enforceable. By imposing an emissions cap regionally, the $NO_X$ SIP Call reduced $NO_X$ emissions from large EGUs and large non-EGUs such as industrial boilers, internal combustion engines, and cement kilns. In response to the $NO_X$ SIP Call, Pennsylvania

[6] Although the $NO_X$ SIP Call was issued in order to address ozone pollution, reductions of $NO_X$ as a result of that program have also impacted $PM_{2.5}$ pollution, for which $NO_X$ is also a precursor emission.

adopted its $NO_X$ Budget Trading Program regulations for EGUs and large industrial boilers, with emission reductions starting in May 2003. Pennsylvania's $NO_X$ Budget Trading Program regulation was approved into the Pennsylvania SIP on August 21, 2001 (66 FR 43795). To meet other requirements of the $NO_X$ SIP Call, Pennsylvania adopted $NO_X$ control regulations for cement plants and internal combustion engines, with emission reductions starting in May 2005. These regulations were approved into the Pennsylvania SIP on September 29, 2006 (71 FR 57428).

*Clean Air Interstate Rule (CAIR) and Cross State Air Pollution Rule (CSPAR):* CAIR, which was promulgated on May 12, 2005 (70 FR 25162), and subsequently revised on April 28, 2006, and December 13, 2006, created regional cap-and-trade programs to reduce $SO_2$ and $NO_X$ emissions in 28 eastern states, including Pennsylvania. In 2009, the CAIR ozone season $NO_X$ trading program superseded the $NO_X$ Budget Trading Program, although the emission reduction obligations of the $NO_X$ SIP Call were not rescinded. See 40 CFR 51.121(r) and 51.123(aa). On May 23, 2008, Pennsylvania submitted a full CAIR SIP revision to meet the requirements of CAIR. Pennsylvania's CAIR SIP revision addressed all the requirements of CAIR rulemaking and also modified other requirements in Pennsylvania's SIP that interact with CAIR. EPA approved the Commonwealth's CAIR regulation, codified in 25 Pa. Code Chapter 145, Subchapter D, into the Pennsylvania SIP on December 10, 2009 (74 FR 65446). In Pennsylvania's CAIR SIP revision, Pennsylvania terminated its $NO_X$ Budget Trading Program and transitioned to the Federal CAIR for large electric generating units (EGU).

On July 6, 2011, EPA finalized CSAPR as a replacement for CAIR. CSAPR became effective on January 1, 2015, for $SO_2$ and annual $NO_X$, and May 1, 2015, for ozone season $NO_X$. 76 FR 48208. EPA estimated CSAPR will reduce EGU $SO_2$ emissions by 73% and $NO_X$ emissions by 54% from 2005 levels in the CSAPR region, which includes Pennsylvania. On September 7, 2016, EPA finalized the CSAPR Update, which reduced Pennsylvania's ozone season $NO_X$ trading budget from 51,912 tons to 17,952 tons of ozone season allowances, reduced Pennsylvania's ozone season $NO_X$ emissions variability limit from 10,902 tons to 3,770 tons, and reduced Pennsylvania's $NO_X$ ozone season new unit set-aside from 1,038 tons to 541 tons. 81 FR 74504 (October 26, 2016).

Because CSAPR is a Federal implementation plan (FIP), states are not required to develop their own CSAPR rules. EPA sets an emissions budget for each of the states covered by CSAPR, including Pennsylvania. Allowances to emit pollution are allocated to affected sources based on each state's emissions budget. The rule provides flexibility to affected sources, allowing sources in each state to determine their own compliance path. This includes adding or operating control technologies, upgrading or improving controls, switching fuels, and using allowances. Sources can buy and sell allowances and bank allowances for future use as long as each source holds enough allowances to account for its emissions by the end of the compliance period.

*$NO_X$ Budget Trading Program Limits on Non-EGUs:* Pennsylvania's CAIR SIP revision also established emission limits for the non-EGUs and other units that were subject to the Commonwealth's $NO_X$ Budget Trading Program but are not subject to the CAIR $NO_X$ Ozone Season Trading Program. These units must continue monitoring $NO_X$ emissions and must meet an emissions cap. Pennsylvania's regulation, codified in 25 Pa. Code § 145.8(d), was approved by EPA as a SIP revision on December 10, 2009, and codified at 40 CFR 52.2020(c)(1).

*Cement Kilns and Large Stationary Internal Combustion Engines:* Pennsylvania's CAIR SIP revision also included regulations updating the cement manufacturing and large stationary internal combustion engine regulations that were adopted pursuant to the $NO_X$ SIP Call. Until 2009, cement kilns and large stationary internal combustion engines that were subject to the $NO_X$ SIP Call were required to surrender $NO_X$ SIP Call allowances if they exceeded their $NO_X$ emission limits set forth in Pennsylvania's regulations. Because Pennsylvania discontinued the $NO_X$ Budget Trading Program beginning 2009, at which point $NO_X$ SIP Call allowances were replaced by CAIR $NO_X$ ozone season allowances, Pennsylvania modified the regulations to require surrender of CAIR $NO_X$ ozone season and CAIR $NO_X$ annual allowances for emission limit exceedances. Pennsylvania's regulations for large stationary internal combustion engines and cement kilns, codified in 25 Pa. Code Chapter 145, Subchapters B and C, respectively, were approved by EPA as a SIP revision on December 10, 2009, and codified at 40 CFR 51.2020(c)(1). An amendment to Pennsylvania's regulation for cement kilns to reduce $NO_X$ emissions effective April 15, 2011, codified in 25 Pa. Code Chapter 145, Subchapter C, was subsequently approved by EPA as a SIP revision on July 19, 2011, and codified at 40 CFR 51.2020(c)(1).

*Federal Standards for Hazardous Air Pollutants:* As required by the CAA, EPA developed Maximum Available Control Technology (MACT) Standards to regulate emissions of hazardous air pollutants from a published list of industrial sources referred to as ''source categories.'' The MACT standards have been adopted and incorporated by reference in Section 6.6 of Pennsylvania's Air Pollution Control Act and implementing regulations in 25 Pa. Code § 127.35 and are also included in Federally enforceable permits issued by PADEP for affected sources.

*NNSR:* Major facilities proposed in Pennsylvania are subject to NNSR requirements in nonattainment areas and PSD requirements in areas of the Commonwealth designated attainment for NAAQS including carbon monoxide (CO), PM, lead, $SO_2$, ozone and nitrogen dioxide ($NO_2$). Generally, NSR permit requirements are applicable to a facility located in a nonattainment area for a particular pollutant with a potential to emit 50 tpy or more of VOCs or 100 tpy or more of $NO_X$, $SO_2$, PM or CO. It should be noted that the entire Commonwealth is included in the Ozone Transport Region pursuant to section 184 of the CAA, and is treated as a moderate ozone nonattainment area, irrespective of the area's attainment status. Any major stationary source or major modification subject to the NSR requirements must receive a plan approval, which requires the source to, among other things, offset its potential to emit air contaminants including $NO_X$, PM and VOCs by securing emission reduction credits at the specified offset ratio, employ the ''lowest achievable emission rate'' (LAER) for each regulated pollutant and conduct an alternative analysis. The nonattainment NSR requirements are codified in 25 Pa. Code chapter 127, subchapter E and approved by EPA as a revision to the Commonwealth's SIP on December 9, 1997 (62 FR 64722), and May 14, 2012 (77 FR 28261). See 40 CFR 52.2020(e)(1).

*PSD:* The PSD program is a pre-construction review and permitting program applicable to new or modified major stationary sources subject to title I, parts C of the CAA. The PSD requirements are applicable to major sources in areas attaining the NAAQS. The Federal PSD regulations codified in 40 CFR part 52 are incorporated by reference in their entirety in 25 Pa. Code § 127.83. Pennsylvania's PSD

regulations, codified in 25 Pa. Code Chapter 127, subchapter D, were approved by EPA on August 21, 1984, and codified at 40 CFR 52.2058 (49 FR 33127). PSD permit requirements may apply to a facility located in an attainment with the potential to emit 100 tpy or 250 tpy of the six criteria pollutants including lead, CO, $NO_2$, ozone, PM and $SO_2$ depending on the source category. Any major stationary source or major modification subject to the PSD requirements must establish the best available control technology (BACT). In addition, the owner or operator of a facility needs to conduct an ambient air quality analysis, analyze the impacts to soils, vegetation and visibility and make sure that the project will not adversely impact mandatory Federal Class I areas including national parks greater than 6,000 acres and national wilderness areas and national memorial parks greater than 5,000 acres. In addition, pursuant to 25 Pa. Code § 127.1, the emissions of air pollutants from new sources in Pennsylvania must be controlled to the maximum extent, consistent with Best Available Technology (BAT), as determined by the Department as of the date of issuance of the plan approval for the new source. PADEP determines BAT requirements on a case-by-case basis for both major and minor stationary sources considering energy, environmental benefits and costs. Under 25 Pa. Code § 127.12(a)(5), an application for a plan approval must show that the emissions from a new source will be the minimum attainable through the use of BAT. Pennsylvania regulations define ''best available technology'' in 25 Pa. Code § 121.1 as, ''Equipment, devices, methods or techniques as determined by the Department which will prevent, reduce or control emissions of air contaminants to the maximum degree possible and which are available or may be made available.'' PADEP's BAT regulations, codified in 25 Pa. Code §§ 127.1 and 127.12(a)(5), were approved by EPA on July 30, 1996 (61 FR 39594).

Sunoco Marcus Hook Shutdown—Delaware County Only

In addition to the stationary, mobile, nonroad, and area emissions control measures list in this section, emissions in Delaware County were reduced as a result of the permanent shutdown of the largest emitting point source in the county. The Sunoco, Inc. Marcus Hook Refinery facility, located three miles southwest of the Chester monitoring site, shut down and permanently ceased all crude petroleum refining operations, effective December 31, 2011. In the Delaware County redesignation request, Pennsylvania reports that, due to this permanent shutdown of the refining operations, emissions from the facility were reduced by more than 4,500 tons (2,044 tpy oxides of sulfur, 1,490 oxides of nitrogen, 674 tpy $PM_{2.5}$, 320 tpy VOC, and 3 tpy $NH_3$) from the 2011 base year.

Mobile Sources

*Federal Motor Vehicle Control Programs (FMVCP) and Pennsylvania Clean Vehicles Program for Passenger Vehicles and Light-Duty Trucks and Cleaner Gasoline:* Tier 1 tailpipe standards established by the CAA Amendments of 1990, under section 202(g) of the CAA, include $NO_X$ and VOC limits for light-duty gasoline vehicles and light-duty gasoline trucks. In 1994, these standards began to be phased in. Evaporative VOC emissions were reduced in gasoline-powered cars starting with Model Year (MY) 1998. In 1998, Pennsylvania adopted the Pennsylvania Clean Vehicles Program, which incorporates by reference certain California Low Emission Vehicle (CA LEV) emission standards for passenger cars and light-duty trucks. As required under section 177 of the CAA, these provisions are identical to the low emission standards adopted by California. The Pennsylvania Clean Vehicles Program does not incorporate by reference the California zero emissions vehicle (ZEV) or emissions control warranty systems statement provisions. In the same rulemaking, Pennsylvania adopted the National Low Emission Vehicle (NLEV) program as a compliance alternative to the Pennsylvania Clean Vehicles Program. The NLEV program became effective in the Ozone Transport Region (OTR) in 1999. Pennsylvania's New Motor Vehicle Emissions Control Program regulations allowed automobile manufacturers to comply with NLEV instead of the CA LEV program through MY 2005. These regulations affected vehicles 6,000 pounds and less. Pennsylvania's New Motor Vehicle Emissions Control Program regulations, which include the Pennsylvania Clean Vehicles Program, are codified in 25 Pa. Code §§ 126.401–126.441, and are approved into the Pennsylvania SIP. See 77 FR 3386 (January 24, 2012).

In 1999, EPA promulgated regulations more stringent than NLEV (Tier 2), starting with model year (MY) 2004. The NLEV program was replaced for MY 2004 and later by the more stringent Federal Tier 2 vehicle emissions regulations (65 FR 6698, February 10, 2000), and vehicle manufacturers operating under the NLEV program became subject to the Tier 2 requirements. Pennsylvania amended the former New Motor Vehicle Emissions Control Program in 2006. The Clean Vehicles Program continues to incorporate the CA LEV program by reference. As amended, the program affects MY 2008 and newer passenger cars and light-duty trucks. EPA approved Pennsylvania's Clean Vehicles Program as a revision to the Commonwealth's SIP on January 24, 2012 (77 FR 3386).

*Heavy-Duty Diesel Control Programs:* On January 18, 2001, EPA promulgated regulations for heavy-duty engines and vehicles (over 14,000 pounds) starting with MY 2004. 66 FR 5002. In 2002, Pennsylvania adopted the Heavy-Duty Diesel Emissions Control Program for model years starting after May 2004. The program incorporates California standards by reference and requires MY 2005 and subsequent new heavy-duty diesel highway engines to be those certified by California. On October 6, 2000, EPA adopted new emission standards for heavy-duty engines and vehicles for MY 2007 and subsequent years. 65 FR 59896. For diesel engines, the standards were phased in from 2007 to 2010 for $NO_X$ and VOCs. For gasoline engines, the standards were phased in during MY 2008 and 2009. Federal and California standards are virtually identical for MY 2007. For MY 2008, California adopted requirements for idling restriction engine programming and an optional ''clean $NO_X$ idle'' standard. Because the new engine standards are adversely affected by sulfur in fuel, EPA also required most highway diesel fuel to contain no more than 15 parts per million (ppm) of sulfur, beginning in the fall of 2006. In addition, Federal heavy-duty greenhouse gas standards (76 FR 57106, September 15, 2011), which began phasing in with the MY 2014, will result in decreased energy consumption rates and decreased refueling emissions.

*Vehicle Emission Inspection/Maintenance Program:* In early 2004, Pennsylvania expanded its Vehicle Emission Inspection/Maintenance (I/M) Program. Delaware County falls under Pennsylvania's ''Philadelphia'' program (which also includes Bucks, Chester, Montgomery and Philadelphia Counties), while Lebanon County falls under Pennsylvania's ''South Central Region'' program (which also includes Berks, Cumberland, Dauphin, Lancaster, Lehigh, Northampton, and York Counties). Both programs apply to gasoline-powered vehicles 9,000 pounds and under, MY 1975 and newer. For vehicles MY 1996 and newer, the programs consist of an annual on-board diagnostic test and a gas cap pressure

test. For subject vehicles MY 1995 and older, the programs consist of an annual visual inspection of pollution control devices to ensure they are present, connected and the proper type for the vehicle, as well as a gas cap pressure test. In addition, the Philadelphia area program requires dynamometer testing on certain MY 1995 and older vehicles. However, the dynamometer testing is being phased out, with the vehicles dropping out each year. By 2021, the dynamometer testing will be completely phased out for all vehicles MY 1995 and older, and these vehicles will receive the same tests as in the South Central Region program. These regulations can be found in 67 Pa. Code Chapter 177. Pennsylvania submitted the expanded emissions program to EPA as a SIP revision on December 1, 2003. EPA approved the SIP revision on October 6, 2005 (70 FR 58313).

*Low Sulfur Gasoline:* The 1999 Federal Tier 2 regulations (65 FR 6698, February 10, 2000) reduced the sulfur content of gasoline by up to 90 percent, enabling the use of new emission control technologies in cars and trucks that reduce harmful air pollution. Requirements for use of low-sulfur gasoline enabled use of advanced emission control systems in light-duty vehicles beginning in MY 2004. Vehicles meeting Tier 2 emission standards are 77 to 95 percent cleaner than earlier models. On April 28, 2014, EPA promulgated a regulation adopting more stringent vehicle standards and reducing sulfur limits in gasoline further with the Tier 3 Motor Vehicle Emission and Fuel Standards program (79 FR 23414). The rule was effective on June 27, 2014. The Tier 3 program requires the annual average content of sulfur in gasoline to be reduced to 10 ppm, effective January 1, 2017. By 2030, when fully implemented, this program will increase the effectiveness of vehicle emission controls even further and reduce onroad emissions of $NO_X$ by 25 percent, direct particulate matter by 10 percent and VOCs by 16 percent. The rule will also significantly reduce emissions of carbon monoxide and hazardous air pollutants including acrolein, benzene, formaldehyde and acetaldehyde.

Nonroad Sources

EPA has adopted a series of regulations affecting new diesel-powered (compression ignition) and gasoline-powered (spark ignition) nonroad engines of various sizes and applications. On June 29, 2004, EPA adopted a rule establishing a comprehensive national program to reduce emissions from nonroad diesel engines (69 FR 38958). The rule phased in requirements for reducing the sulfur content of diesel used in nonroad diesel engines. The reduction in fuel sulfur content prevents damage to the more advanced emission control systems needed to meet the engine standards; it will also reduce fine particulate emissions from diesel engines. In 2007, fuel sulfur levels were limited to 500 ppm for nonroad applications other than ocean-going marine vessels. In 2010, fuel sulfur levels were reduced to the same sulfur concentration as in highway fuel, 15 ppm; effective in 2012 to locomotive and marine diesel fuel. See 70 FR 70498 (November 22, 2015) and 71 FR 25706 (May 1, 2006). On April 30, 2010, EPA adopted changes to the nonroad diesel fuel program to allow for the production and sale of diesel fuel with up to 1,000 ppm sulfur for use in Category 3 marine vessels. 75 FR 22896

Area Sources

*Low Sulfur Fuel Oil:* Pennsylvania's low sulfur fuel rule limits the sulfur content of No. 2 fuel oil to 500 ppm, No. 4 fuel oil to 2,500 ppm and Nos. 5 and 6 fuel oils to 5,000 ppm. Compliance with the lower sulfur content limits began on July 1, 2016. Pennsylvania estimated statewide $SO_2$ emission reductions of approximately 21,000 tons per year from this rule. These emission reductions will allow the Commonwealth to attain and maintain the $PM_{2.5}$ standards and improve visibility. The final-form regulation was submitted to EPA for approval as a SIP revision on February 26, 2013. EPA approved this rule into Pennsylvania's SIP on July 10, 2014 (79 FR 39330).

*Consumer Products:* Pennsylvania's statewide regulation applies to any person who sells, supplies, offers for sale, or manufactures certain consumer products on or after January 1, 2005, for use in the Commonwealth. The Consumer Products program is codified in 25 Pa. Code Chapter 130, Subchapter B. It was submitted to EPA as a SIP revision on March 26, 2003 and approved on December 8, 2004 (69 FR 70895). Amendments to the Consumer Products regulations were adopted on October 11, 2008, submitted to EPA as a SIP revision on March 11, 2009, and approved on October 18, 2010 (75 FR 63717).

*Adhesives, Sealants, Primers and Solvents:* Pennsylvania adopted a regulation in 2010 to control VOC emissions from adhesives, sealants, primers and solvents. EPA approved this regulation as a SIP revision on September 26, 2012 (77 FR 59090).

*Conclusion:* EPA has reviewed this suite of measures and the emission reductions achieved in the Delaware and Lebanon Areas between 2011 and 2014 (summarized in Table 3 and 4) and determined that the Areas did attain the 2012 annual $PM_{2.5}$ NAAQS due to permanent and enforceable measures.

*D. Does Pennsylvania have fully approvable maintenance plans for the Delaware and Lebanon Areas?*

In conjunction with Pennsylvania's requests to redesignate the Delaware and Lebanon Areas to attainment, Pennsylvania submitted SIP revisions to provide for maintenance of the 2012 annual $PM_{2.5}$ NAAQS in the Areas through 2030. EPA is proposing to approve Pennsylvania's maintenance plans in this rulemaking action. If this proposed action is finalized, the Areas will have approved maintenance plans.

Maintenance Plan Requirements

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ NAAQS violations.

The Calcagni memorandum provides additional guidance on the content of a maintenance plan. It states that a maintenance plan should address the following items: The attainment emissions inventory, a maintenance demonstration showing maintenance for the 10 years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

As discussed in detail in the following section, Pennsylvania's maintenance plan submissions document that the Delaware and Lebanon Areas' emissions inventories show that the areas will remain below the attainment year inventories through 2030, more than ten years after redesignation.

Attainment Inventory

The Calcagni memorandum indicates that states requesting redesignation to attainment should develop an attainment emissions inventory in order to identify the level of emissions in the area that is sufficient to attain the NAAQS. The attainment inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include the emissions during the time period associated with monitoring data showing attainment.

Pennsylvania developed attainment year emissions inventories for the Delaware and Lebanon Areas for 2014, one of the years in the period during which the Areas first monitored attainment of the 2012 annual $PM_{2.5}$ NAAQS. The attainment year inventories include emissions of $PM_{2.5}$, $NO_X$, $SO_2$, VOC, $NH_3$, and $PM_{10}$. The attainment levels of emissions are summarized in Tables 5 and 6, along with future maintenance projections. Note that these tables do not include emissions of $PM_{10}$, as it is not a precursor to $PM_{2.5}$.

TABLE 5—DELAWARE COUNTY EMISSIONS INVENTORY MAINTENANCE DEMONSTRATION

[tpy]

| Sector | 2014 Attainment | 2022 Interim | 2030 Maintenance | Difference 2014–2022 | Difference 2014–2030 |
|---|---|---|---|---|---|
| **$PM_{2.5}$** | | | | | |
| Point | 624 | 635 | 684 | −11 | −60 |
| Area | 999 | 1,030 | 1,050 | −31 | −51 |
| Onroad | 136 | 79 | 53 | 57 | 83 |
| Nonroad | 97 | 74 | 66 | 23 | 31 |
| Total | 1,856 | 1,818 | 1,853 | 38 | 3 |
| **$SO_2$** | | | | | |
| Point | 1,924 | 1,896 | 1,896 | 28 | 28 |
| Area | 708 | 194 | 164 | 514 | 544 |
| Onroad | 31 | 11 | 10 | 20 | 21 |
| Nonroad | 2 | 1 | 1 | 1 | 1 |
| Total | 2,665 | 2,102 | 2,071 | 563 | 594 |
| **$NO_X$** | | | | | |
| Point | 5,181 | 5,690 | 5,784 | −509 | −603 |
| Area | 2,385 | 2,110 | 2,008 | 275 | 377 |
| Onroad | 4,652 | 2,016 | 956 | 2,636 | 3,696 |
| Nonroad | 783 | 524 | 459 | 259 | 324 |
| Total | 13,001 | 10,340 | 9,207 | 2,661 | 3,794 |
| **VOC** | | | | | |
| Point | 1,410 | 1,501 | 1,508 | −91 | −98 |
| Area | 7,396 | 7,393 | 7,421 | 3 | −25 |
| Onroad | 2,534 | 1,354 | 816 | 1,180 | 1,718 |
| Nonroad | 1,145 | 953 | 943 | 192 | 202 |
| Total | 12,485 | 11,201 | 10,688 | 1,284 | 1,797 |
| **$NH_3$** | | | | | |
| Point | 201 | 165 | 171 | 36 | 30 |
| Area | 179 | 157 | 153 | 22 | 26 |
| Onroad | 118 | 89 | 88 | 29 | 30 |
| Nonroad | 2 | 2 | 2 | 0 | 0 |
| Total | 500 | 413 | 414 | 87 | 86 |

TABLE 6—LEBANON COUNTY EMISSIONS INVENTORY MAINTENANCE DEMONSTRATION

[tpy]

| Sector | 2014 Attainment | 2022 Interim | 2030 Maintenance | Difference 2014–2022 | Difference 2014–2030 |
|---|---|---|---|---|---|
| **$PM_{2.5}$** | | | | | |
| Point | 120 | 154 | 178 | −34 | −58 |
| Area | 1,088 | 1,016 | 1,024 | 72 | 64 |
| Onroad | 87 | 50 | 31 | 37 | 56 |
| Nonroad | 47 | 29 | 19 | 18 | 28 |

TABLE 6—LEBANON COUNTY EMISSIONS INVENTORY MAINTENANCE DEMONSTRATION—Continued

[tpy]

| Sector | 2014 Attainment | 2022 Interim | 2030 Maintenance | Difference 2014–2022 | Difference 2014–2030 |
|---|---|---|---|---|---|
| Total | 1,342 | 1,249 | 1,252 | 93 | 90 |
| **$SO_2$** | | | | | |
| Point | 229 | 235 | 238 | −6 | −9 |
| Area | 368 | 80 | 69 | 288 | 299 |
| Onroad | 11 | 6 | 6 | 5 | 5 |
| Nonroad | 1 | 1 | 1 | 0 | 0 |
| Total | 609 | 322 | 314 | 287 | 295 |
| **$NO_X$** | | | | | |
| Point | 549 | 637 | 718 | −88 | −169 |
| Area | 1,258 | 1,132 | 1,057 | 126 | 201 |
| Onroad | 3,131 | 1,867 | 1,374 | 1,264 | 1,757 |
| Nonroad | 505 | 305 | 214 | 200 | 291 |
| Total | 5,443 | 3,941 | 3,363 | 1,502 | 2,080 |
| **VOC** | | | | | |
| Point | 220 | 226 | 229 | −6 | −9 |
| Area | 6,657 | 6,660 | 6,681 | −3 | −24 |
| Onroad | 1,183 | 644 | 411 | 539 | 772 |
| Nonroad | 316 | 238 | 226 | 78 | 90 |
| Total | 8,376 | 7,768 | 7,547 | 608 | 829 |
| **$NH_3$** | | | | | |
| Point | 22 | 29 | 33 | −7 | −11 |
| Area | 2,251 | 2,336 | 2,334 | −85 | −83 |
| Onroad | 44 | 35 | 35 | 9 | 9 |
| Nonroad | 1 | 1 | 1 | 0 | 0 |
| Total | 2,318 | 2,401 | 2,403 | −83 | −85 |

Maintenance Demonstration

As discussed previously in this notice, EPA has determined that the Delaware and Lebanon Areas are attaining the 2012 annual $PM_{2.5}$ NAAQS based on monitoring data for the 3-year period from 2015–2017. In its maintenance plans, Pennsylvania demonstrates maintenance by showing that emissions projected over the maintenance period for the Areas will not exceed emissions levels that were present when the Areas came into attainment of the 2012 annual $PM_{2.5}$ NAAQS. Pennsylvania selected 2014 as the attainment emission inventory year for the Delaware and Lebanon Areas. The attainment inventories identify the level of emissions in the Delaware and Lebanon Areas that is sufficient to attain the 2012 annual $PM_{2.5}$ NAAQS. Pennsylvania has previously submitted 2011 base year emission inventories for the Delaware and Lebanon Areas, which EPA approved into the Pennsylvania SIP. See 83 FR 31064. In its maintenance demonstrations for the Delaware and Lebanon Areas, Pennsylvania projected emissions forward to 2022 and 2030, which satisfies the 10-year interval required in section 175(A) of the CAA.

The emissions inventories address four major types of sources: Point, area, on-road mobile, and non-road mobile. The future year emissions inventories have been estimated using projected rates of growth in population, traffic, economic activity, expected control programs, and other parameters. Non-road mobile emissions estimates, with the exception of the railroad locomotives, commercial marine, and aircraft emissions, were developed using EPA's NONROAD component of EPA's Motor Vehicle Emissions Simulator (MOVES) model version 2014b. On-road mobile source emissions were calculated using EPA's MOVES2014a on-road mobile emission model.

EPA has reviewed Pennsylvania's emissions inventories for the Delaware and Lebanon Areas and determined that Pennsylvania developed them consistent with EPA guidance. EPA's evaluation of the 2014 attainment inventories and 2020 and 2030 projected inventories can be found EPA's technical support documents (TSDs) prepared for the Delaware and Lebanon Areas, which are available online at *http://www.regulations.gov,* Docket ID: EPA–R03–OAR–2019–0262.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' (Calcagni memorandum, p. 9). Where the emissions inventory method of showing maintenance is used, the purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. (Calcagni memorandum, pp. 9–10). Pennsylvania's maintenance plan

submissions expressly document that the Delaware and Lebanon Areas overall emissions inventories will remain well below the attainment year inventories through 2030. In addition, EPA believes that the Delaware and Lebanon Areas will continue to maintain the 2012 annual $PM_{2.5}$ NAAQS through 2030. Thus, if EPA finalizes its proposed approval of the redesignation request and maintenance plan, the approval will be based upon this showing, in accordance with section 175A, and EPA's analysis described herein, that the Delaware and Lebanon Areas' maintenance plans provide for maintenance for at least ten years after redesignation.

The maintenance plans for the Delaware and Lebanon Areas for the 2012 annual $PM_{2.5}$ NAAQS include a maintenance demonstration that:

(1) Shows compliance with and maintenance of the annual $PM_{2.5}$ NAAQS by providing information to support the demonstration that current and future emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors remain at or below 2014 attainment year emissions levels.

(2) Uses 2014 as the attainment year and includes future emission inventory projections for 2022 and 2030.

(3) Identifies an ''out year'' at least 10 years after EPA review and potential approval of the maintenance plan. Per 40 CFR part 93, $PM_{2.5}$ and $NO_X$ MVEBs were established for the last year (2030) of the maintenance plan.

(iv) Provides, as shown in Tables 5 and 6, the estimated and projected emissions inventories, in tons per year (tpy), for the Delaware and Lebanon Area, for $PM_{2.5}$, $NO_X$, $SO_2$, VOC, and $NH_3$.

For maintenance of the 2012 $PM_{2.5}$ NAAQS, Pennsylvania relies on the same suite of permanent and enforceable stationary, mobile, nonroad, and area source measures as set out in the redesignation requests for the Areas. As shown in Table 5, Pennsylvania projects that emissions of $PM_{2.5}$ and all its precursors will be below the 2014 attainment year emissions through 2030 in Delaware County. Table 6 shows that $PM_{2.5}$ and all its precursors except $NH_3$ will below the 2014 attainment year emissions through 2030 in Lebanon County. Although there is a slight increase in the $NH_3$ between 2014 and 2030 (85 tpy or 4%), $NH_3$ emissions are significantly lower than they were in the 2011 base year (3,910 tpy). Furthermore, in Lebanon County emission reductions of $PM_{2.5}$ and the other precursors far outweighs the slight increase in $NH_3$ emissions.

Monitoring Networks

In the maintenance plans, Pennsylvania committed to continue to operate the air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the Delaware and Lebanon Areas for the 2012 annual $PM_{2.5}$ NAAQS, with no reductions in the number of sites from those in the existing network unless pre-approved by EPA.

Verification of Continued Attainment

Pennsylvania remains obligated to continue to quality-assure monitoring data and enter all data into the Air Quality System in accordance with Federal guidelines. In the maintenance plans, Pennsylvania committed to track the attainment status of the 2012 annual $PM_{2.5}$ NAAQS in the Delaware and Lebanon Areas by reviewing air quality and emissions data during the maintenance period. Pennsylvania will perform an annual evaluation of two key factors, vehicle miles traveled (VMT) data and emissions reported from stationary sources and compare them to the assumptions about these factors used in the maintenance plans. Pennsylvania will also evaluate the periodic (every three years) emission inventories prepared under EPA's Air Emission Reporting Requirements (40 CFR part 51, subpart A) to determine if they exceed the attainment year inventory (2014) by more than 10 percent. Based on these evaluations, Pennsylvania will consider whether any further emission control measures should be implemented.

Contingency Plan

Contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

In the maintenance plans for the Delaware and Lebanon Areas, Pennsylvania commits to continue to implement all applicable requirements which were contained in the SIP for the Areas before redesignation, even after EPA approval of Pennsylvania's requests for the Areas to be redesignated to attainment. Additionally, Pennsylvania commits to adopt and expeditiously implement corrective actions, as necessary and appropriate, if contingency measures are triggered. Pennsylvania's contingency plans for Delaware and Lebanon Areas define warning level and action level responses.

The maintenance plans for the Areas state that a first-level warning response will be triggered if the annual mean $PM_{2.5}$ concentration exceeds 12.5 $\mu g/m^3$ in a single calendar year at any monitor within one of the Areas or if the periodic emissions inventory for one of the Areas exceeds the 2014 attainment year inventory by more than 10 percent. The first-level response will consist of a study to determine whether the triggers indicate a trend toward higher $PM_{2.5}$ values in the affected area and whether emissions of $PM_{2.5}$ and its precursors appear to be increasing. If there appears to be an increasing trend, the study will evaluate whether the trend is likely to continue and, if so, the necessary and appropriate control measures to reverse the trend. Implementation of necessary and appropriate controls would take place as expeditiously as possible.

The maintenance plans for the Areas explain that a second-level warning response will be prompted if the 2-year average of the annual mean $PM_{2.5}$ concentrations exceeds 12.0 $\mu g/m^3$ at any monitor within one of the Areas. If this occurs, Pennsylvania will evaluate the conditions leading to the $PM_{2.5}$ levels and evaluate what measures might be most effective in correcting the $PM_{2.5}$ levels. Pennsylvania will also analyze the potential emissions effects of Federal, state and local measures that have been adopted but not yet implemented at the time the second-level response is triggered. Pennsylvania will begin the process of adopting selected measures that are necessary and appropriate so that, in the event of a violation (action level trigger), the measures can be implemented as expeditiously as practicable.

The maintenance plans for the Areas define an action level response as being triggered if a violation of the $PM_{2.5}$ NAAQS occurs. If triggered, Pennsylvania will initiate the rulemaking process to adopt and

implement contingency measures to return the area to attainment of the 2012 annual $PM_{2.5}$ NAAQS. The maintenance plans set out the following criteria for selecting contingency measures: Air quality analysis indicating the nature of the violation; emission reduction potential; timeliness of implementation; and costs, equity and cost-effectiveness. The maintenance plans set time frames for adoption and implementation of the contingency measures, which provides for full adoption of measures within approximately 24 months of a confirmed violation, considering all the steps in Pennsylvania's regulatory adoption process. The contingency measures Pennsylvania would consider promulgating if a violation of the 2012 annual $PM_{2.5}$ NAAQS occurs in one of the Areas include the following regulatory and nonregulatory measures as listed in Table 7.

TABLE 7—CONTINGENCY MEASURES FOR THE DELAWARE AND LEBANON AREAS

| Measure type | Contingency measure |
|---|---|
| Regulatory measures ..... | A regulation to reduce emissions on high-electric demand days (Delaware County only).<br>A regulation to lower the sulfur content of No. 2 fuel oil from 500 to 15 ppm.<br>Other regulatory measures identified based on the selection criteria set out in the contingency plans. |
| Non-regulatory measures ..... | Voluntary diesel projects:<br>—Diesel retrofit (including replacement, repowering or alternative fuel use) for public or private local onroad or off-road fleets;<br>—Idling reduction technology for Class 2—yard locomotives; and<br>—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.<br>Promotion of accelerated turnover of lawn and garden equipment, especially commercial equipment.<br>Additional promotion of alternative fuels for fleets, home heating and agricultural use. |

*Conclusion:* EPA has reviewed Pennsylvania's maintenance plans for Delaware and Lebanon Areas and determined that they meet the requirements of CAA section 175A. The plans demonstrate continued attainment of the 2012 annual $PM_{2.5}$ NAAQS for at least ten years after EPA approves a redesignation to attainment and they contain adequate contingency measures to address the possibility of future NAAQS violations. Therefore, EPA is proposing to approve the maintenance plans.

## V. Has Pennsylvania adopted approvable motor vehicle emission budgets?

### *A. What are the motor vehicle emissions budgets (MVEB)?*

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*i.e.,* RFP, SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan, the MVEBs are termed ''on road-mobile source emission budgets.'' Pursuant to 40 CFR part 93 and § 51.112, MVEBs must be established in a $PM_{2.5}$ maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Transportation conformity is required under section 176(c) of the CAA to ensure that Federally supported highway and transit projects, and other activities are consistent with (conform to) the purpose of the SIP. The CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of the SIP. This means that such actions will not cause or contribute to violations of a NAAQS; worsen the severity of an existing violation; or delay timely attainment of any NAAQS or any interim milestone. Actions involving the Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the Transportation Conformity Rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that their metropolitan transportation plans and transportation improvement plans (TIPs) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the MVEBs contained in a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEBs contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEBs are adequate for transportation conformity purposes, the MVEBs can be used by state and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The maintenance plans submitted by PADEP for the Delaware and Lebanon Areas identify the $NO_X$ and $PM_{2.5}$ MVEBs for transportation conformity purposes for the years 2014, 2022, and 2030. These MVEBs (including safety margins) are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for

2022 and 2030 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations. The MVEBs for the Delaware and Lebanon Areas are displayed in Tables 8 and 9.

TABLE 8—ON-ROAD MVEBS CONTAINED IN THE DELAWARE COUNTY, PA 2012 $PM_{2.5}$ NONATTAINMENT AREA MAINTENANCE PLAN

| Delaware County, PA | Motor vehicle emissions budget for $PM_{2.5}$ on-road emissions (tpy) | Mobile vehicle emissions budget for $NO_X$ on-road emissions (tpy) |
|---|---|---|
| 2014 | 136 | 4,652 |
| 2022 Predicted | 75 | 1,833 |
| Safety Margin | 4 | 183 |
| 2022 Budget | 79 | 2,016 |
| 2030 Predicted | 53 | 869 |
| Safety Margin | 0 | 87 |
| 2030 Budget | 53 | 956 |

TABLE 9—ON-ROAD MVEBS CONTAINED IN THE LEBANON COUNTY, PA 2012 $PM_{2.5}$ NONATTAINMENT AREA MAINTENANCE PLAN

| Lebanon County, PA | Motor vehicle emissions budget for $PM_{2.5}$ on-road emissions (tpy) | Mobile vehicle emissions budget for $NO_X$ on-road emissions (tpy) |
|---|---|---|
| 2014 | 87 | 3,131 |
| 2022 Predicted | 45 | 1,697 |
| Safety Margin | 5 | 170 |
| 2022 Budget | 50 | 1,867 |
| 2030 Predicted | 28 | 1,249 |
| Safety Margin | 3 | 125 |
| 2030 Budget | 31 | 1,374 |

*B. What is a safety margin?*

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The highway emission budgets include a safety margin, which was created by setting aside a portion of the difference between attainment year and maintenance year emissions of $PM_{2.5}$ and $NO_X$ to accommodate unanticipated growth in highway vehicles. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Tables 10 and 11 show that the amount of emission reductions anticipated between 2014 and 2022 and between 2014 and 2030 that accommodates the safety margins granted for the Delaware and Lebanon Areas.

TABLE 10—COMPARISON OF SAFETY MARGIN TO TOTAL ANTICIPATED EMISSION REDUCTIONS IN 2022 AND 2030 (TONS) FOR DELAWARE COUNTY

| Delaware County | $PM_{2.5}$ | $NO_X$ |
|---|---|---|
| 2014 | 1,856 | 13,001 |
| 2022 | 1,814 | 10,157 |
| 2030 | 1,853 | 9,120 |
| 2014–2022 Anticipated Emission Reductions | 43 | 2,844 |
| Safety Margin Granted | 4 | 183 |
| 2014–2030 Anticipated Emission Reductions | 2 | 3,881 |
| Safety Margin Granted | 0 | 87 |

TABLE 11—COMPARISON OF SAFETY MARGIN TO TOTAL ANTICIPATED EMISSION REDUCTIONS IN 2022 AND 2030 (TONS) FOR LEBANON COUNTY

| Lebanon County | $PM_{2.5}$ | $NO_X$ |
|---|---|---|
| 2014 | 1,343 | 5,443 |
| 2022 | 1,244 | 3,771 |
| 2030 | 1,249 | 3,238 |
| 2014–2022 Anticipated Emission Reductions | 99 | 1,672 |

TABLE 11—COMPARISON OF SAFETY MARGIN TO TOTAL ANTICIPATED EMISSION REDUCTIONS IN 2022 AND 2030 (TONS) FOR LEBANON COUNTY—Continued

| Lebanon County | $PM_{2.5}$ | $NO_X$ |
|---|---|---|
| Safety Margin Granted | 5 | 170 |
| 2014–2030 Anticipated Emission Reductions | 94 | 2,205 |
| Safety Margin Granted | 3 | 125 |

*C. Why are the MVEBs approvable?*

The 2014, 2022, and 2030 MVEBs for the Delaware and Lebanon Areas are approvable because the MVEBs for $NO_X$ and $PM_{2.5}$ continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

*D. What is the adequacy and approval process for the MVEBs in the Delaware and Lebanon Areas maintenance plans?*

In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Delaware and Lebanon Areas MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, EPA will respond to the comments on the MVEBs in the final rulemaking action or proceed with the adequacy process as a separate action. EPA's action on the Delaware and Lebanon Areas MVEBs will also be announced on EPA's conformity website: *https://www.epa.gov/state-and-local-transportation.*[7] The public comment period will end at the same time as the public comment period for this proposed rule. EPA's analyses of the MVEBs for the Delaware and Lebanon Areas can be found in EPA's MVEB TSDs prepared for this action, available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2019–0262.

## VI. Proposed Action

EPA's review of this material indicates that the Delaware and Lebanon Areas meet the requirements for redesignation to attainment for the 2012 annual $PM_{2.5}$. EPA is proposing to grant PADEP's redesignation requests and to determine that the Delaware and Lebanon Areas meet the 2012 annual $PM_{2.5}$ NAAQS, based on the most recent three years of certified air quality data. The effect of this proposed action, if finalized, would be to change the designation status of the Delaware and Lebanon Areas from nonattainment to attainment for the 2012 annual $PM_{2.5}$ NAAQS, thereby removing the requirement for a nonattainment new source review permitting program and stopping the sanctions clock associated with a finding of failure to submit NNSR updates for the annual $PM_{2.5}$ NAAQS. EPA is also proposing to approve PADEP's maintenance plans for the Delaware and Lebanon Areas as revisions to the Pennsylvania SIP. EPA is also proposing to find the 2014, 2022, and 2030 $PM_{2.5}$ and $NO_X$ MVEBs contained in the maintenance plans for the Delaware and Lebanon Areas adequate and is also proposing to approve these MVEBs into the Pennsylvania SIP for transportation conformity purposes. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Although EPA is proposing approval of the redesignation requests and maintenance plans for the Delaware and Lebanon Areas in one rulemaking, EPA views each redesignation request as a separate request and each maintenance plan as a separable SIP revision. Thus, should EPA receive comment on one redesignation request or maintenance plan, but not the other, EPA will treat the comment as only pertaining to that specific redesignation request or maintenance plan and may take separate, final action on the remaining redesignation request or maintenance plan.

## VII. Statutory and Executive Order Reviews

Under the CAA, the redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of the geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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

[7] Once there, click on ''Adequacy Review of SIP Submissions.''

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

In addition, this proposed rule, proposing to approve Pennsylvania's redesignation requests and maintenance plans for the 2012 $PM_{2.5}$ NAAQS for the Delaware and Lebanon Areas, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

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

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

Dated: July 5, 2019.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2019–15091 Filed 7–15–19; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
Vol. 84, No. 136
Tuesday, July 16, 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

**[FOA No. OPPE–013]**

## Office of Partnerships and Public Engagement; Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers

*Catalog of Federal Domestic Assistance (CFDA) No.:* 10.443—Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers.

**AGENCY:** Office of Partnerships and Public Engagement (OPPE), USDA.

**ACTION:** Funding Opportunity Announcement (FOA) FY 2019.

**SUMMARY:** This notice announces the availability of funds and solicits applications from community-based and non-profit organizations, institutions of higher education, and Tribal entities to compete for financial assistance through the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (hereinafter referred to as the ''2501 Program''). Individual applicants do not meet the eligibility criteria.

Funding is being provided to eligible entities who, in partnership with the Office of Partnerships and Public Engagement (OPPE), will conduct outreach initiatives and training to achieve the overall goal of the 2501 Program—to assist socially disadvantaged and veteran farmers and ranchers in owning and operating farms and ranches while increasing their participation in agricultural programs and services provided by the U.S. Department of Agriculture (USDA). This is a non-construction grant.

**DATES:** Only one project proposal may be submitted per eligible entity. Proposals must be submitted through *www.grants.gov* and received by August 15, 2019, at 11:59 p.m. EST. Proposals submitted after this deadline will *not* be considered for funding.

OPPE will host two (2) teleconferences during the open period of this announcement to answer any clarifying questions as follows:

- July 23, 2019 at 2 p.m. EST, Telephone Number: (800) 230–1085, Passcode: 469845
- August 6, 2019 at 2 p.m. EST, Telephone Number: (800) 230–1059, Passcode: 469846

### Filing a Complaint of Discrimination

To file a program discrimination complaint, you may obtain a complaint form by sending an email to *Cr-info@ascr.usda.gov*. You or your authorized representative must sign the complaint form. You are not required to use the complaint form. You may write a letter instead. If you write a letter, it must contain all the information requested in the form and be signed by you or your authorized representative. Incomplete information will delay the processing of your complaint. Employment civil rights complaints will not be accepted through this email address.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

*Fax:* (202) 690–7442.

*Email: program.intake@usda.gov*.

**FOR FURTHER INFORMATION PLEASE CONTACT:** U.S. Department of Agriculture, Office of Partnerships and Public Engagement, Attn: Kenya Nicholas, Assistant Deputy Director, J.L. Whitten Building, Room 520–A, 1400 Independence Avenue SW, Washington, DC 20250, Phone: (202) 720–6350, Fax: (202) 720–7704, Email: *2501grants@usda.gov*.

*Persons with Disabilities:* Persons who require alternative means for communication (Braille large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Additionally, alternative means for submissions due to disability status will be approved on a case-by-case basis.

**SUPPLEMENTARY INFORMATION:** *Funding/Awards:* The total funding potentially available for this competitive opportunity is approximately $16 million (including funds provided in the 2018 Farm Bill and the Consolidated Appropriations Act of 2019). The OPPE will award grants from this announcement, subject to availability of funds and the quality of applications received. All applicants will compete based on their organization's entity type (*e.g.,* nonprofit organization or higher education institution), as described below. Projects that are part of multi-year initiatives will be funded in accordance with the approved statement of work. Additionally, USDA has the discretion to fund multi-year projects in an effort to maximize outreach and technical assistance ensuring geographical distribution of funds. Eligible entities may receive subsequent years funding provided that:

(a) Activities and associated costs do not overlap with projects awarded in previous years; and

(b) recipients are current and compliant with existing financial and progress reporting. The progress of existing projects, along with the percentage of funds used to date, may impact funding decisions.

Funding will be awarded based on peer competition within the three categories described below along with the amount of anticipated funding for each category. The OPPE reserves discretion to allocate funding between the three categories based upon the number and quality of applications received. There is no commitment by the OPPE to fund any particular application or to select a specific number of recipients within each category.

1. Category #1: Eligible entities described in Sections III.A.2, III.A.3, and III.A.4 (1890 Land Grant colleges and universities, 1994 Tribal Land-Grant, Alaska Native and American Indian Tribal colleges and universities, and Hispanic-Serving Institutions of higher education).

2. Category #2: Eligible entities described in Sections III.A.1 and III.A.6 (*i.e.,* nonprofit organizations, community-based organizations, including a network or a coalition of community-based organizations, Indian Tribes (as defined in 25 U.S.C. 450b), and National Tribal organizations).

3. Category #3: Eligible entities described in Sections III.A.5 and III.A.7 (*i.e.,* all other institutions of higher education including 1862 colleges, nonprofit organizations without a 501(c)(3) status certification from the

IRS, and other organizations or institutions, including those that received funding under this program before January 1, 1996).

**Contents of This Announcement**



**I. Funding Opportunity Description**

*A. Background*

The OPPE is committed to ensuring that socially disadvantaged and veteran farmers and ranchers are able to equitably participate in USDA programs. Differences in demographics, culture, economics, and other factors preclude a single approach to identifying solutions that can benefit our underserved farmers and ranchers. Community-based and non-profit organizations, higher education institutions, and eligible Tribal entities can play a critical role in addressing the unique difficulties they face and can help improve their ability to start and maintain successful agricultural businesses. With 2501 Program funding, organizations can extend our outreach efforts to connect with and assist local socially disadvantaged and veteran farmers and ranchers and to provide them with information on available USDA resources.

1. The 2501 Program was authorized by the Food, Agriculture, Conservation, and Trade Act of 1990. The Food, Conservation, and Energy Act of 2008 expanded the authority of the Secretary of Agriculture (the Secretary) to provide awards under the program and transferred the administrative authority to the OPPE. The Agricultural Act of 2014 further expanded the program to include outreach and assistance to veterans. The 2501 Program extends USDA's capacity to work with members of farming and ranching communities by funding projects that enhance the equitable participation of socially disadvantaged and veteran farmers and ranchers in USDA programs. It is the OPPE's intention to build lasting relationships between USDA, the recipient's organizations, and socially disadvantaged and veteran farmers and ranchers.

2. Only one proposal will be accepted from each organization. This does not apply to applicants in the State of Massachusetts. The State fiscal transfer agent may submit multiple proposals ensuring that only one proposal is submitted on behalf of each of its individual fiscally sponsored organizations.

*B. Scope of Work*

The 2501 Program provides funding to eligible organizations for training and technical assistance projects designed to assist socially disadvantaged and veteran farmers and ranchers in owning and operating viable agricultural enterprises. This is a non-construction grant. Proposals must be consistent with requirements stated in 7 U.S.C. 2279(c)(3). Under this statute, the outreach and technical assistance program funds shall be used exclusively:

1. To enhance coordination of the outreach, technical assistance, and education efforts authorized under agriculture programs;

2. To assist the Secretary of Agriculture in:

a. Reaching current and prospective socially disadvantaged farmers or ranchers and veteran farmers or ranchers in a linguistically appropriate manner; and

b. improving the participation of those farmers and ranchers in USDA programs.

Proposals from eligible entities must address two or more of the following priority areas:

1. Assist socially disadvantaged or veteran farmers and ranchers in owning and operating successful farms and ranches;

2. Improve participation among socially disadvantaged or veteran farmers and ranchers in USDA programs;

3. Build relationships between current and prospective farmers and ranchers who are socially disadvantaged or veterans and USDA's local, state, regional, and National offices;

4. Introduce agriculture-related information to socially disadvantaged or veteran farmers and ranchers through innovative training and technical assistance techniques; and

5. Introduce agricultural education targeting socially disadvantaged youth, and/or socially disadvantaged beginning farmers and ranchers, in rural and persistent poverty communities.

OPPE is required to seek input from stakeholders providing technical assistance under this grant program at least annually. This is to ensure that the program is responsive to the eligible entities providing technical assistance (7 U.S.C. 2279(c)(4)(J)). To fulfill this obligation, the OPPE may require Project Directors to attend an annual training conference that can be expensed with awarded grant funds not to exceed $1,000 per award. The conference will allow recipients, USDA officials, and other agriculture-related guests to share ideas and lessons learned; provide training on performance and financial reporting requirements; and provide information on USDA programs and services. Project Directors will also have an opportunity to make contacts in their field and regions and gather information on best practices. Stakeholder input will also be accepted by those unable to attend the annual symposium in person by September 30th of each fiscal year at: *2501grants@usda.gov.*

*C. Anticipated Outputs (Activities), Outcomes (Results), and Performance Measures*

1. Outputs (Activities). The term ''output'' means an outreach, educational component, or assistance activity, task, or associated work product related to improving the ability of socially disadvantaged and veteran farmers and ranchers to own and operate farms and ranches, assistance with agriculture related activities, or guidance for participation in USDA programs. Outputs may be quantitative or qualitative but must be measurable during the period of performance.

Examples of outputs from the projects to be funded under this announcement may describe an organization's activities and their participants such as: Number of workshops or meetings held and number of participants attending; frequency of services or training delivered; and to whom and/or development of products, curriculum, or resources provided. Other examples include but are not limited to the following:

a. Number of socially disadvantaged and veteran farmers or ranchers served;

b. number of conferences or training sessions held and number of socially disadvantaged and veteran farmers and ranchers who attended;

c. type and topic of educational materials distributed at outreach events;

d. creation of a program to enhance the operational viability of socially disadvantaged and veteran farmers and ranchers;

e. number of completed applications submitted for consideration for USDA programs; or

f. activity that supports increased participation of socially disadvantaged farmers and ranchers and veteran farmers and ranchers in USDA programs.

Progress and Financial Reports will be required, as specified in Section VI, Subsection D, ''Reporting Requirement.''

2. Outcomes (Results). The term ''outcome'' means the difference or

effect that has occurred as a result from carrying out an activity, workshop, meeting, or from delivery of services related to a programmatic goal or objective. Outcomes refer to the final impact, change, or result that occurs as a direct result of the activities performed in accomplishing the objectives and goals of your project. Outcomes may refer to results that are agricultural, behavioral, social, or economic in nature. Outcomes may reflect an increase in knowledge or skills, a greater awareness of available resources or programs, or actions taken by stakeholders as a result of learning. Specifically, outcomes must be quantitative as it relates to the project goals and objectives.

Project Directors will be required to document anticipated outcomes that are funded under this announcement including, but not limited to the following:

a. Number of new farmers and/or ranchers as a result of your award;

b. number of farmers and/or ranchers whom *applied* to participate in USDA's programs and services among socially disadvantaged and veteran farmers and ranchers by program area, race, sex, national origin and disability;

c. number of applications *approved* for funding among socially disadvantaged and veteran farmers and ranchers as a result of your activities funded with grant funds by program area, race, sex, national origin and disability;

d. number of farmers and/or ranchers whom have increased access to and participation in USDA's programs and services for socially disadvantaged and veteran farmers and ranchers to increase outreach efforts through effective communication linguistically appropriate;

e. increase in sustainability and retention of socially disadvantaged and veteran farming operations;

f. increase in profitability and economic stability resulting from increased marketing and sales opportunities for the products of socially disadvantaged and veteran farmers and ranchers; and

g. increase in the number of USDA Agency's programs and services utilized.

3. Performance Measures. Performance measures are tied to the goals or objectives of each activity and ultimately the overall purpose of the project. They provide insight into the effectiveness of proposed activities by indicating areas where a project may need adjustments to ensure success. Applicants must develop performance measure expectations which will occur as a result of their proposed activities. These expectations will be used as a mechanism to track the progress and success of a project. Project performance measures should include statements such as: Whether workshops or technical assistance will meet the needs of farmers or ranchers in the service area and why; how much time will be spent in group training or individual hands-on training of farmers and ranchers in the service area; or whether activities will meet the demands of stakeholders. Project performance measures must include the assumptions used to make those estimates.

Consider the following questions when developing performance measurement statements:

- What is the measurable short-term and long-term impact the project will have on servicing or meeting the needs of stakeholders?
- How will the organization measure the effectiveness and efficiency of their proposed activities to meet their overall goals and objectives?

## II. Award Information

### *A. Statutory Authority*

The statutory authority for this action is 7 U.S.C. 2279(c), which authorizes award funding for projects designed to provide outreach and assistance to socially disadvantaged and veteran farmers and ranchers.

### *B. Expected Amount of Funding*

The total estimated funding expected to be available for awards under this competitive opportunity is approximately $16 million, including funds provided in the 2018 Farm Bill and the Consolidated Appropriations Act of 2019. Funding will be awarded in the following three categories for a maximum of $750,000:

A. Proposals less than $300,000

B. Proposals between $300,000–$525,000

C. Proposals exceeding $525,000

### *C. Project Period*

The performance period for projects selected from this solicitation will not begin prior to the effective award date listed in the grant agreement. The maximum project period is three (3) years.

### *D. Award Type*

Funding for selected projects will be in the form of a grant agreement which must be fully executed no later than September 30, 2019. The anticipated Federal involvement will be limited to the following activities:

1. Approval of recipients' final budget and statement of work accompanying the grant agreement;

2. Monitoring of recipients' performance through quarterly, annual and final financial and performance reports; and

3. Evaluation of recipients' use of federal funds through desk audits and on-site visits.

## III. Eligibility Information

### *A. Eligible Entities*

1. Any not for profit community-based organization, network, or coalition of community-based organizations that:

- Demonstrates experience in providing agricultural education or other agricultural-related services to socially disadvantaged or veteran farmers and ranchers;
- provides documentary evidence of work with, and on behalf of, socially disadvantaged or veteran farmers and ranchers during the 3-year period preceding the submission of a proposal for assistance under this program; and
- does not or has not engaged in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

2. An 1890 or 1994 institution of higher education (as defined in 7 U.S.C. 7601).

3. An American Indian Tribal community college or an Alaska Native cooperative college.

4. A Hispanic-Serving Institution of higher education (as defined in 7 U.S.C. 3103).

5. Any other institution of higher education (as defined in 20 U.S.C. 1001) that has demonstrated experience in providing agricultural education or other agricultural-related services to socially disadvantaged farmers and ranchers.

6. An Indian Tribe (as defined in 25 U.S.C. 5304) or a national tribal organization that has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers.

7. All other organizations or institutions that received funding under this program before January 1, 1996, but only with respect to projects that the Secretary considers similar to projects previously carried out by the entity under this program.

### *B. Cost-Sharing or Matching*

Matching is not required for this program.

*C. Threshold Eligibility Criteria*

Applications from eligible entities that meet all criteria will be evaluated as follows:

1. Proposals must comply with the submission instructions and requirements set forth in Section IV of this announcement. Pages in excess of the page limitation will not be considered.

2. Proposals must be received through *www.grants.gov* as specified in Section IV of this announcement on or before the proposal submission deadline. Applicants will receive an electronic confirmation receipt of their proposal from *www.grants.gov.*

3. Proposals received after the submission deadline will not be considered. Please note that in order to submit proposals, organizations must create accounts in *www.grants.gov* and in the System for Awards Management (*SAM.gov*); both of which could take several weeks. Therefore, it is strongly suggested that organizations begin this process immediately. Registering early could prevent unforeseen delays in submitting your proposal.

4. Proposals must address a minimum of two or more of the priority areas that provide outreach and assistance to socially disadvantaged or veteran farmers and ranchers as stated in Section I, Subsection B, Scope of Work.

5. Incomplete or partial applications will not be eligible for consideration.

**IV. Proposal and Submission Information**

*A. System for Award Management (SAM)*

It is a requirement to register for SAM (*www.sam.gov).* There is NO fee to register for this site.

Per 2 CFR part 200, applicants are required to: (1) Be registered in SAM prior to submitting an application; (2) provide a valid unique entity identifier in the application; and (3) continue to maintain an active SAM registration with current information at all times during which the organization has an active Federal award or an application or plan under consideration by a Federal awarding agency. The OPPE may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time the OPPE is ready to make a Federal award, OPPE may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

SAM contains the publicly available data for all active exclusion records entered by the Federal Government identifying those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. All applicant organizations and their key personnel will be vetted through *SAM.gov* to ensure they are in compliance with this requirement and not on the Excluded Parties List. Organizations identified as having delinquent Federal debt may contact the Treasury Offset Program at (800) 304–3107 for instructions on resolution, but will not be awarded a 2501 Program grant prior to resolution.

*B. Obtain Proposal Package From www.grants.gov*

Applicants may download individual grant proposal forms from *www.grants.gov.* For assistance with *www.grants.gov,* please consult the Applicant User Guide at *http://grants.gov/assets/ApplicantUserGuide.pdf.*

Applicants are required to submit proposals through *www.grants.gov.* Applicants will be required to register through *www.grants.gov* in order to begin the proposal submission process. We strongly suggest you initiate this process immediately to avoid processing delays due to registration requirements.

Federal agencies post funding opportunities on *www.grants.gov.* The OPPE is not responsible for submission issues associated with *www.grants.gov.* If you experience submission issues, please contact *www.grants.gov* support staff for assistance.

Proposals must be submitted by August 15, 2019, via *www.grants.gov* at 11:59 p.m. EST. Proposals received after this deadline *will not* be considered.

*C. Content of Proposal Package Submission*

All submissions must contain completed and electronically signed original application forms, as well as a Project Summary, Project Narrative, and a Budget Narrative as described below:

1. Forms and documents. The forms listed below can be found in the proposal package at *www.grants.gov* and must be submitted with all applications. Required forms are provided as fillable PDF templates. Applicants must download and complete these forms and submit them in the application submission portal at *www.grants.gov.* PDF documents listed below are documents the applicant must create in Word format and then submit in PDF format.

- Standard Form (SF) 424, Application for Federal Assistance
- Standard Form (SF) 424A, Budget Information–Non-Construction Programs
- Standard Form (SF) 424B, Assurances—Non-Construction Programs
- Key Contacts Form (please provide first, middle, and last names)
- PDF document of 1-Page Project Summary
- PDF document of Project Narrative
- PDF document of Budget Narrative
- Form AD–3031, Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants

Please note, additional required forms from organizations being awarded 2501 Grant funds will be provided for execution upon grant approval.

2. Attachments. The attachments listed below are required for all proposals and must be included in the proposal package at *www.grants.gov.* Attachment 1 will consist of the Project Summary Page and the Project Narrative. Attachment 2 will consist of the Budget Narrative. Please submit the summary and narratives in PDF format to preserve the content and formatting. Attachment 3 will consist of Appendices. NOTE: Number each page of each attachment and indicate the total number of pages per attachment (*i.e.,* 1 of 15, 2 of 15, etc.). *DO NOT PASSWORD PROTECT ANY OF YOUR SUBMITTED DOCUMENTS.* Documents that are password protected cannot be viewed by the OPPE staff or members of the Independent Review Panel.

*Attachment 1: Project Summary Page.* The proposal must contain a Project Summary Page, which should not be numbered and must follow immediately after the SF Form 424, Application for Federal Assistance form. The Project Summary Page is limited to 250 words and should be written as a CONCISE summary or advertisement about your project. It should contain:

- Your organization's name;
- Name of your project;
- Three or four sentences describing your project;
- The primary populations/communities you serve;
- The project's geographic service area (counties, state(s), etc.); and
- Project Director's name, email address, and telephone number.

No points will be given or subtracted for the Project Summary Page as it will be used for informational purposes. Organizations can expect that the Project Summary Page may be used in its entirety or in part for media purposes to include press releases, informational

emails to potential stakeholders or partners, to provide upper echelons of government with a snapshot of an organization, and for demographic purposes. Please do not restate the objectives of the 2501 Program (*i.e.,* ''to provide outreach and assistance for socially disadvantaged farmers and ranchers and veterans farmers and ranchers''); it should reflect the goal of your specific project.

• *Attachment 1: Project Narrative.* In *20 double-spaced pages or less,* using 1-inch margins and 12-point font, indicate the organization that will conduct the project and the priority areas that will be addressed by the project. Please be concise. Note: Members of the review panel will not be required to review proposals from organizations that have deviated from these formatting specifications.

○ Project proposals should include a well-conceived strategy for addressing the priority areas stated in Section I, Part B, Scope of Work. Additionally, proposals must: (1) Define and establish the existence of the needs of socially disadvantaged farmers and ranchers, veteran farmers and ranchers, or both; (2) identify the geographic area of service; and (3) discuss the potential impact of the project.

○ *Programmatic Capability:* Project proposals must: (1) Identify the experience of the organization(s) taking part in the project (past successes); (2) identify the names of organizations that will be your partners in the project if any; (3) identify the qualifications, relevant experience, education, and publications of each Project Director or collaborator; (4) specifically address the work to be completed by key personnel and the roles and responsibilities within the scope of the proposed project.

○ *Financial Management Experience:* Document a demonstrated ability to successfully manage and complete your project by including details of past successfully completed projects and financial management experiences.

○ *Tracking and Measuring:* Clearly document a detailed plan for tracking and measuring the progress and results of the project in terms of achieving expected project outputs and outcomes as stated in Section I, Part C, Performance Measures.

○ In an organized format, create a timeline for each task to be accomplished during the period of performance timeframe. Relate each task to one of the five priority areas in Section I, Subsection B. The timeline is part of the 15-page limit but can be as simple as a one-page description of tasks.

• *Attachment 2: Budget Narrative.* The Budget Narrative should identify and describe the costs associated with the proposed project, including sub-awards or contracts and indirect costs. Please refer to 2 CFR 200 Subpart E—Cost Principles, to review allowable/unallowable costs. Applicants may charge their negotiated indirect cost rate or 10 percent, whichever is lower. Indirect cost rates exceeding 10 percent will not be permitted. Other funding sources may also be identified in this attachment. Each cost indicated must be reasonable, allocable, necessary, and allowable under the Federal Cost Principles (2 CFR part 200, subpart E—Cost Principles) in order to be funded. The Budget Narrative should not exceed two pages and is *not* part of the Project Narrative.

• *Attachment 3: Appendices.* Organizations may submit abbreviated Articles of Incorporation for recently established organizations (must have been established at least 3 years prior to this application); résumés for key personnel; Letters of Commitment; Letters of Intent, Partnership Agreements, or Memoranda of Understanding with partner organizations; Letters of Support; 501(c)(3) certification from the IRS, or other supporting documentation which is encouraged but not required. Applicants can consolidate all supplemental materials into one additional attachment. Do *not* include sections from other attachments as an Appendix.

*Checklist of documents to submit through www.grants.gov:*

1. SF–424, Application for Federal Assistance. Note: Ensure this is completed with accuracy; particularly email addresses and phone numbers. The OPPE may not be able to reach you if your information is incorrect.

2. Project Summary Page (no more than 250 words).

3. Project Narrative including a timeline (no more than 20 pages, 12-point font, and 1-inch margins only).

**Note:** To ensure fairness and uniformity for all applicants, Project Narratives not conforming to this stipulation may not be considered.

4. SF–424A, Budget Information–Non-Construction Programs

5. SF 424B, Assurances—Non-Construction Programs

6. Budget Narrative (not to exceed 2 pages)

7. Key Contacts Form (include the Project Director/Manager and Financial Representative). Provide first, middle, and last names.

**Note:** Please ensure this form is completed with accuracy. Individuals not listed on an applicants' Key Contact Form will not receive information about or access to data that concerns the applicant organization.

8. Résumés of key personnel, Partnership Agreements, Letters of Intent, Support, or Recommendation, proof of 501(c)(3) status (if applicable), etc.

Best practice notes:

* Complete the following as soon as possible:

(1) Obtain a registered DUNs number.

(2) Register and maintain an active System for Award Management (SAMs) account.

(3) Register in *www.grants.gov.*

* Only submit Adobe PDF file format documents to *www.grants.gov* to preserve content and formatting.

* Documents must be named with short titles to prevent issues with uploading/downloading documents from *www.grants.gov.* Documents with long names may not always upload/download properly.

* Do not password protect any submitted forms or documents.

* Ensure all the information on your SF–424 Application and Key Contact forms are correct. Please include first, middle, and last names on Key Contact forms.

UPLOADING ATTACHMENTS ON YOUR APPLICATION. There are three blocks on the application where you may upload attachments:

* On block 14, click on ''Add Attachment'' to upload your Project Summary and Project Narrative.

* In the section that reads ''Budget Narrative File(s)'', type in the ''Mandatory Budget Narrative Filename''. Just below the file name, click on ''Add Mandatory Budget Narrative'' to upload your Budget Narrative.

* After block 15, click on ''Add Attachments'' to add all your supporting documents (résumés, Partnership Agreements, Letters of Support, etc.).

*D. Sub-Awards and Partnerships*

Funding may be used to provide sub-awards, which includes using sub-awards to fund partnerships; however, the recipient must utilize at least 50 percent of the total funds awarded, and no more than three sub-awards will be permitted. All sub-awardees must comply with applicable requirements for sub-awards. Applicants must provide documentation of a competitive bidding process for services, contracts, and products, including consultant contracts, and conduct cost and price analyses to the extent required by applicable procurement regulations.

The OPPE awards funds to *one eligible applicant* as the recipient. Please indicate a lead applicant as the responsible party if other organizations are named as partners or co-applicants or members of a coalition or consortium. The recipient will be held accountable to the OPPE for the proper administrative requirements and expenditure of all funds.

*E. Submission Dates and Times*

The closing date and time for receipt of proposal submissions is August 15, 2019, at 11:59 p.m., EST, via *www.grants.gov.* Proposals received after the submission deadline will be considered late without further consideration. Proposals must be submitted through *www.grants.gov* without exception. Additionally, organizations must also be registered in the SAM (*www.sam.gov*). Creating an account for both websites can take several weeks to receive account verification and/or PIN numbers. Please allow sufficient time to complete access requirements for these websites. The proposal submission deadline is firm.

*F. Confidential Information*

In accordance with 2 CFR part 200, the names of entities submitting proposals, as well as proposal contents and evaluations, will be kept confidential to the extent permissible by law. Any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked as such in the proposal. If an applicant chooses to include confidential or proprietary information in the proposal, it will be kept confidential to the extent permitted by law.

*G. Pre-Submission Proposal Assistance*

1. The OPPE may not assist individual applicants by reviewing draft proposals or providing advice on how to respond to evaluation criteria. However, the OPPE will respond to questions from individual applicants regarding eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification regarding the announcement. Any questions should be submitted to *2501grants@usda.gov.* Additionally, OPPE will host public teleconferences to address clarifying questions during the open period of this solicitation as listed on Page 1.

2. The OPPE will post questions and answers relating to this funding opportunity during its open period on the Frequently Asked Questions (FAQs) section of our website: *http://www.outreach.usda.gov/grants/.* Reviewing this section of our website will likely save you valuable time. The OPPE will update the FAQs on a weekly basis and conduct webinars on an as-needed basis.

3. Please visit our website at: *https://www.outreach.usda.gov/grants/index.htm* to review the most recent Terms and Conditions for administering our grants. This version is subject to change upon new program requirements.

## V. Application Review Information

*A. Evaluation Criteria*

Only eligible entities whose proposals meet the threshold criteria in Section III of this announcement will be reviewed according to the evaluation criteria set forth below. Applicants should explicitly and fully address these criteria as part of their proposal package. Each proposal will be evaluated under the regulations established under 2 CFR part 200.

An Independent Review Panel will use a point system to rate each proposal, awarding a maximum of 100 points (80 points, plus an additional 20 discretionary points for secretarial priorities). Each proposal will be reviewed by at least two members of the Independent Review Panel who will review and score all applications submitted. The Independent Review Panel will numerically score and rank each application within the three funding categories. Funding decisions will be based on the Independent Review Panel's recommendations to the designated approving official. Final funding decisions will be made by the designated approving official and are not appealable.

Please be patient as processing all submitted applications, vetting key personnel, proposal reviews, approval process, and agreement creation is a lengthy process that takes approximately two to three months. All applicants will be notified of their application status when final selections have been made.

*B. Evaluation Criteria for New Grants Proposals*

| Criteria | Points |
|---|---|
| 1. *Project Narrative:* Under this criterion, your proposal will be evaluated to the extent to which the narrative includes a well-conceived strategy for addressing the requirements and objectives stated in Section I, Part B, Scope of Work, (see page 5, Project Narrative, for further clarification) identifying a minimum of two or more of the priority areas | 40 |
| In addition, the OPPE may award up to 20 discretionary points (five (5) points each) for the following eligible entities:<br>• Nongovernmental and community-based organizations with an expertise in working with socially disadvantaged and/or veteran farmers and ranchers (2018 Farm Bill provision).<br>• Projects to assist states/communities identified as rural and/or persistent poverty;<br>• Projects assisting beginning and/or youth farmers and ranchers (as defined in 7 U.S.C. 3319f);<br>• Projects with an emphasis on partnering and leveraging funding with other organizations, entities or programs to maximize areas of coverage for outreach (*i.e.,* nonprofits, for profits, Federal, state, tribal and local entities, higher education institutions, etc.). | 20 |
| 2. *Programmatic Capability:* Under this criterion, applicants will be evaluated based on their ability to successfully complete and manage the proposed project considering the applicant's: Organizational experience, its staff's expertise and/or qualifications, and the organization's resources. The organization must also clearly document its historical successes and future plans to continue assisting socially disadvantaged and veteran farmers and ranchers | 10. |
| 3. *Financial Management Experience:* Under this criterion, applicants will be evaluated based on their demonstrated ability to successfully complete and manage the proposed project considering the applicants' past performance in successfully completing and managing prior funding agreements identified, Section I, Part C, Performance Measures (see page 8). Past performance documentation on successfully completed projects may be at the Federal, state, or local community level. Per 2 CFR 200.205, if an applicant is a prior recipient of Federal awards, their record in managing that award will be reviewed, including timeliness of compliance with applicable reporting requirements and conformance to the terms and conditions of previous Federal awards | 5 |

| Criteria | Points |
|---|---|
| 4. *Tracking and Measuring:* Under this criterion, the applicant's proposal will be evaluated based upon clearly documenting a detailed plan for tracking and measuring their progress toward achieving the expected project outputs and (see page 6). Applicants should indicate how they intend to clearly document the effectiveness of their project in achieving proposed thresholds or benchmarks in relation to stated goals and objectives. For example, state how your organization plans to connect socially disadvantaged and veteran farmers and ranchers with USDA agricultural programs. Specifically, how many new or existing farmers and ranchers were assisted in *applying* for USDA's programs and services, versus the number of farmers and ranchers *approved.* Applicants must clearly demonstrate how they will ensure timely and successful completion of the project with a reasonable time schedule for execution of the tasks associated with the projects. This criterion should clearly address how you will quantify the tracking of your progress and measuring the success of your planned project | 15 |
| *5. Budget:* Under this criterion, proposed project budget will be evaluated to determine whether costs are reasonable, allowable, allocable, and necessary to accomplish the proposed goals and objectives; and whether the proposed budget provides a detailed breakdown of the approximate funding used for each major activity. Additionally, indirect costs (10 percent maximum) must be appropriately applied (see page 14). Food for conferences may not exceed $10 per person. Additionally, cattle for demonstration projects only, may not exceed $4000, which includes any transportation costs, feed/feeding lot, etc.). Grant funds may NOT be used to pay attendees as an incentive for participation in conferences nor be advertised as such. For a list of unallowable costs, please see 2 CFR Part 200, subpart E | 10 |

*C. Selection of Reviewers*

All applications will be reviewed by members of an Independent Review Panel. Panel members are selected based upon training and experience in assisting socially disadvantaged and veteran farmers and ranchers. This assistance includes, but is not limited to, bringing increased awareness of USDA's programs and services in underserved communities, outreach, technical assistance, cooperative extension services, civil rights, education, statistical, and ethnographic data collection and analysis, and agricultural programs, and are drawn from a diverse group of experts, including applicant peers, to create a balanced panel.

**VI. Award Administration Information**

*A. Award Notices*

Proposal Notifications and Feedback

1. Successful applicants will be notified by the OPPE via telephone, email, and/or postal mail that its proposed project has been recommended for award. The notification will be sent to the *Project Manager* listed on the SF–424, Application for Federal Assistance. Project Managers should be the Authorized Organizational Representative (AOR) and authorized to sign on behalf of the organization. It is imperative that this individual is responsive to notifications by the OPPE. If the individual is no longer in the position, please notify the OPPE immediately to submit the new contact for the application by updating your organization's Key Contact form and forwarding a résumé of the new key personnel. The award notice will be forwarded to the recipient for execution and must be returned to the OPPE Director, who is the authorizing official. Once grant documents are executed by all parties, authorization to begin work will be given. At a minimum, this process can take up to 30 days from the date of notification.

2. Within 10 days of award status notification, unsuccessful applicants may request feedback on their application. Feedback will be provided as expeditiously as possible. Feedback sessions will be scheduled contingent upon the number of requests and in accordance with 7 CFR 2500.026.

*B. Administrative and National Policy Requirements*

All awards resulting from this solicitation will be administered in accordance with the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified at 2 CFR part 200, as supplemented by USDA implementing regulations at 2 CFR parts 400 and 415, and OPPE Federal Financial Assistance Programs—General Award Administrative Procedures, 7 CFR part 2500. In compliance with its obligations under Title VI of the Civil Rights Act of 1964 and Executive Order 13166, it is the policy of the OPPE to provide timely and meaningful access for persons with Limited English Proficiency (LEP) to projects, programs, and activities administered by Federal grant recipients. Recipient organizations must comply with these obligations upon acceptance of grant agreements as written in OPPE's Terms and Conditions. Following these guidelines is essential to the success of our mission to improve access to USDA programs for socially disadvantaged and veteran farmers and ranchers.

*C. Data Universal Numbering System, System for Award Management, and www.grants.gov.*

In accordance with the Federal Funding Accountability and Transparency Act (FFATA) and the USDA implementation, all applicants must obtain and provide an identifying number from Dun and Bradstreet's (D&B) Data Universal Numbering System (DUNS). Applicants can receive a DUNS number, at no cost, by calling the toll-free DUNS number request line at (866) 705–5711 or visiting the D&B website at *www.dnb.com.*

In addition, FFATA requires applicants to register with the System for Award Management (SAM). *This registration must be maintained and updated annually.* Applicants can register or update their profile, at no cost, by visiting the SAM website at *www.sam.gov.* This is a requirement to register for *www.grants.gov.*

All applicants must register for an account on *www.grants.gov* to submit their application. There is no cost for registration. All applications must be submitted through *www.grants.gov.* This website is managed by the Department of Health and Human Services, not OPPE. Many Federal agencies use this website to post Funding Opportunity Announcements (FOA). Please click on the ''Support'' tab to contact their customer support personnel for help with submitting your application.

*D. Reporting Requirement*

Your approved statement of work, timeline, and budget are your guiding documents in carrying out the activities of your project and for your reporting requirements. Please familiarize yourself with USDA's grants management system called ezFedGrants: *https://www.nfc.usda.gov/FSS/ClientServices/ezFedGrants/.* In accordance with 2 CFR part 200, the

following reporting requirements will apply to awards provided under this FOA. The OPPE reserves the right to revise the schedule and format of reporting requirements as necessary in the award agreement.

1. Quarterly Progress Reports and Financial Reports will be required as follows:

• *Quarterly Progress Reports.* The recipient must submit the most current OMB-approved Performance Progress Report form (SF–PPR). For each report, the recipient must complete fields 1 through 12 of the SF–PPR. To complete field 10, the recipient is required to provide a detailed narrative of project performance and activities as an attachment, as described in the award agreement. Quarterly progress reports must be submitted to the designated OPPE official via ezFedGrants within 30 days after the end of each calendar quarter.

• *Quarterly Financial Reports.* The recipient must submit SF 425, Federal Financial Report. For each report, the recipient *must complete both* the Federal Cash Transaction Report and the Financial Status Report sections of the SF–425. Quarterly financial reports must be submitted to the designated OPPE official via ezFedGrants within 30 days after the end of each calendar quarter.

2. Annual reports may be warranted for multi-year projects.

3. Final Progress and Financial Reports will be required upon project completion. This report must include a summary of the project or activity throughout the funding period, achievements of the project or activity, and a discussion of overall successes and issues experienced in conducting the project or project activities. It should convey the impact your project had on the communities you served and discuss the project's accomplishments in achieving expected outcomes. This requirement includes, but is not limited to, the number of new USDA applicants as a result of your award, the number of approved applicants for USDA programs and services, increased awareness of USDA programs and services, etc. The final Financial Report should consist of a complete SF–425 indicating the total costs of the project. Final Progress and Financial Reports must be submitted to the designated OPPE official via ezFedGrants within 90 days after the completion of the award period as follows:

| Report | Performance period | Due date | Grace period |
|---|---|---|---|
| Form SF–425, Federal Financial Report and Progress Report (*Due Quarterly*). | 1 October thru 31 December | 12/31/2019 | 1/30/2020 |
| | 1 January thru 31 March | 3/31/2020 | 4/30/2020 |
| | 1 April thru 30 June | 6/30/2020 | 7/30/2020 |
| | 1 July thru 30 September | 9/30/2020 | 10/30/2020 |
| Annual and Final Progress and Financial Reports | Earlier of December 30, 2020, or 90 days after project completion. | | |

* Dates subject to change at the discretion of OPPE.

Signed this 8th day of July 2019.

**Riley Pagett,**

*Chief of Staff, Office of Partnerships and Public Engagement.*

[FR Doc. 2019–14825 Filed 7–15–19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ketchikan Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ketchikan Resource Advisory Committee (RAC) will meet in Ketchikan, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=001t0000002JcvNAAS*.

**DATES:** The meeting will be held on Thursday, August 1, 2019, at 5:00 p.m.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held at the Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. A conference line will be available for those who would like to listen by telephone. For the conference call number, please contact person listed under the **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Ketchikan Mistry Fiords Ranger District. Please call ahead at 907–228–4105 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Penny L. Richardson, RAC Coordinator, by phone at 907–228–4105 or via email at *penny.richardson@usda.gov*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Update members on past RAC projects, and

2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Thursday, July 25, 2019, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Penny L. Richardson, RAC Coordinator, Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to *penny.richardson@usda.gov,* or via fascimile to 907–225–8738.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the

section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: June 14, 2019.

**Frank R. Beum,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2019–15070 Filed 7–15–19; 8:45 am]

**BILLING CODE 3411–15–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Nevada Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Nevada Advisory Committee (Committee) to the Commission will be held at 11:00 a.m. (Pacific Time) Monday, July 29, 2019, the purpose of meeting is for the Committee to vote on the final draft of their report on policing practices.

**DATES:** The meeting will be held on Monday, July 29, 2019 at 11:00 a.m. PT.

*Public Call Information:*

*Dial:* 800–353–6461.

*Conference ID:* 4362069.

**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: 800–353–6461, conference ID number: 4362069. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ.*

Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda:**

I. Welcome
II. Approval of the July 9, 2019 Meeting Minutes
III. Vote on Final Draft
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: July 11, 2019.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2019–15095 Filed 7–15–19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, U.S. Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

**SUPPLEMENTARY INFORMATION:**

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[6/19/2019 through 7/8/2019]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Exact Precision, Inc | 1872 Commerce Park East, Lancaster, PA 17601. | 6/24/2019 | The firm manufactures metal parts for machinery and equipment. |
| AU Cornerstone, Inc | 401 South 1st Street, #201, Mount Vernon, WA 98273. | 6/26/2019 | The firm manufactures jewelry and provides jewelry repair services. |
| SML Packaging, LLC | 117 Greystone Drive, Lynchburg, VA 24502. | 7/2/2019 | The firm manufactures machinery for packing boxes. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are

received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Irette Patterson,**

*Program Analyst.*

[FR Doc. 2019–15010 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[Docket Number: 18–BIS–0001]**

### In the Matter of: Pouran Aazad, a.k.a. Pouran Azad, a.k.a. Pourandokt Aazad, a.k.a Pourandokt Azad, 27333 Ursula Lane, Los Altos Hills, CA 94022; Sadr Emad-Vaez, a.k.a. Seid Sadredin Emad Vaez 27333 Ursula Lane, Los Altos Hills, CA 94022; Ghareh Sabz Co., a.k.a. Ghare Sabz Co., a.k.a. GHS Technology, No. 446 Farjam St., Resalat Square, Tehran, Iran and No. 25, East Farjam Ave., Resalat Square, Tehran, Iran, Respondents; Order Relating to Pouran Aazad, Sadr Emad-Vaez and Ghareh Sabz Co.

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), has notified Pouran Aazad, a.k.a. Pouran Azad, a.k.a. Pourandokt Aazad, a.k.a. Pourandokt Azad (''Aazad''), Sadr Emad-Vaez, a.k.a. Seid Sadredin Emad Vaez (''Emad-Vaez''), and Ghareh Sabz Co., a.k.a. Ghare Sabz Co., a.k.a. GHS Technology (''Ghareh Sabz Co.'') (collectively ''Respondents'') that it has initiated an administrative proceeding against them pursuant to Section 766.3 of the Export Administration Regulations (the ''Regulations''),[1] through the issuance of a Charging Letter to Respondents that alleges that Respondents have violated the Regulations.[2] Aazad and Emad-Vaez are Iranian nationals and naturalized citizens of the United States, with last known addresses in Los Altos Hills, California; Ghareh Sabz Co. is an Iranian company, with last known addresses in Tehran, Iran. Specifically, the charge is:

**Charge 1 15 CFR 764.2(d)—Conspiracy To Export an Item From the United States to Iran Without the Required U.S. Government Authorization**

1. Beginning as early as in or around November 2012, and continuing at least until on or about April 26, 2013, Aazad, Emad-Vaez, and Ghareh Sabz Co. conspired and acted in concert with others, known and unknown, to violate the Regulations and to bring about an act or acts that constitute a violation of the Regulations. The purpose of the conspiracy was to evade the long-standing and well-known U.S. embargo against Iran by purchasing a U.S.-origin micro-drill press for export to Iran and causing the export of this item to Iran, via transshipment through the United Arab Emirates (''UAE''), without the required U.S. Government authorization.

2. Based upon information and belief, Aazad and Emad-Vaez were at all times pertinent hereto Iranian nationals and naturalized citizens of the United States who lived variously in both Tehran, Iran and Northern California. Aazad held herself out as the Chief Financial Officer of Ghareh Sabz Co., while Emad-Vaez described himself as the company's founder and Chief Executive Officer.

3. The conspiracy led to the unauthorized attempted export of a highly-accurate micro drill press with a video edge finder, process inspection camera, and spray mister system from the United States to Iran, via transshipment through the UAE. The micro drill press is subject to the Regulations, designated as EAR99,[3] and valued at $15,199. This item also is subject to the Iranian Transactions and Sanctions Regulations (''ITSR''), administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'').[4]

4. Section 746.7 of the Regulations has long provided, including at all times pertinent hereto, that no person may engage in the export or reexport of any item subject to both the Regulations and the ITSR without authorization from OFAC. 15 CFR 746.7 (2012–2013, 2018). Section 560.204 of the ITR in turn has long prohibited, including at all times pertinent hereto, the unauthorized export, reexport, sale or supply, directly or indirectly, of any item from the United States to Iran. This broad prohibition includes the export, reexport, sale, or supply of any item from the United States to a third country, such as the UAE, undertaken with knowledge or reason to know that the item was intended for supply, transshipment, or reexportation, directly or indirectly, to Iran. 31 CFR 560.204 (2012–2013).[5]

5. As further detailed below, Respondents sought out a U.S.-origin drill press for purchase and export to Iran. On or about November 12, 2012, in response to a request from Ghareh Sabz Co., the U.S. manufacturer of the micro drill press sent Ghareh Sabz Co. a price quote for the micro drill press and its parts and components. That same day, the Ghareh Sabz Co. employee forwarded the quote and specifications to another Ghareh Sabz Co. employee and to Aazad and Emad-Vaez, with the message that ''The forwarded documents include a quotation for Micro-Drill Machine!''

6. On or about November 17, 2012, a purchasing agent at Ghareh Sabz Co. sent the U.S. manufacturer instructions for the order along with requests for a price discount and promises to send a purchase order. The same purchasing agent later sent the U.S. manufacturer a purchase order, dated February 12, 2013, on Ghareh Sabz Co. letterhead. The purchase order listed the drill press

[1] The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''the EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 FR 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules, regulations, orders, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2019). The charged violation occurred in 2012 through 2013. The Regulations governing the violation at issue are found in the 2012 through 2013 versions of the Code of Federal Regulations (15 CFR parts 730–774 (2012–2013)). The 2019 Regulations set forth the procedures that apply to this matter.

[3] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2012–2013).

[4] *See* 31 CFR 560 (2012–2013). The ITSR were known as the Iranian Transactions Regulations (''ITR'') until October 22, 2012. By final rule published and effective on that date, OFAC changed the heading of 31 CFR part 560 from the ''Iranian Transactions Regulations'' to the ''Iranian Transactions and Sanctions Regulations,'' amended the renamed ITSR, and reissued them in their entirety. *See* 77 FR 64,664 (Oct. 22, 2012). 31 CFR part 560 remained (and remains) the same in pertinent part.

[5] See note 4, *supra.*

and related parts and components being acquired, listed the U.S. manufacturer as the supplier, and listed Ghareh Sabz. Co. as the consignee. The purchase order was approved and signed by Aazad.

7. In furtherance of the conspiracy and in an effort to avoid detection by law enforcement, a Ghareh Sabz Co. purchasing agent sent an email to the U.S. manufacturer, on or about March 2, 2013, stating: ''Since we are not able to receive the cargo directly, please arrange to send it to Dubai.'' The purchasing agent also provided the U.S. manufacturer the address and contact information for a shipping and forwarding company in Dubai, UAE, and added that this UAE shipping and forwarding company should be listed as the buyer ''in all the documents (invoice, packing list, certificate of origin, Bill of lading)[.]'' (Parenthetical in original). On or about March 18, 2013, the Ghareh Sabz Co. purchasing agent sent the U.S. manufacturer a similar email, stating: ''Since we can not receive the cargo in Iran please send it to Dubai . . . [p]lease note that [the UAE] shipping and forwarding Co. is the buyer in all the documents (invoice, packing list, certificate of origin & billing of lading) & you should send complete documents to them so they will be able to import the machine in Dubai. Then they will export it to Iran.'' (Parenthetical in original). On or about that same date, Aazad and Emad-Vaez received an email confirming a wire transfer on behalf of Ghareh Sabz Co. to the U.S. manufacturer in the amount of $15,199.

8. On or about April 22, 2013, in furtherance of the scheme to unlawfully export the item to Iran through the UAE, Ghareh Sabz Co. directed the U.S. manufacturer to change shipping documentation in order to list a UAE general trading company as the consignee so that the export could proceed.

9. On or about April 26, 2013, BIS, upon learning of the planned export, ordered the item detained at a warehouse outside San Francisco International Airport. No authorization to export the item had been sought or obtained from OFAC.

10. In so doing, Respondents violated Section 764.2(d) of the Regulations, for which they are jointly and severally liable.

*Whereas,* BIS and Respondents have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein;

*Whereas,* I have approved of the terms of such Settlement Agreement; and

*Whereas,* in doing so, I have taken into consideration the plea agreements that Respondents have entered into with the United States Attorney's Office for the Northern District of California (the ''plea agreements'').

*It is therefore ordered:*

*First,* Respondents shall be assessed a civil penalty in the amount of $300,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order. Respondents are jointly and severally liable for the payment of this civil penalty. Respondents' compliance in full with all of the provisions of the Settlement Agreement and this Order, including full and timely payment of this civil penalty, and their compliance in full with their plea agreements and any sentences imposed against them following or upon their guilty pleas and convictions, are hereby made conditions to any license, license exception, permission, or privilege that may otherwise be granted or be available to Respondents under the Regulations following expiration of the denial of export privileges set forth below.

*Second,* that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2012)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Respondents will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

*Third,* for a period of ten (10) years from the date of this Order, Pouran Aazad, a.k.a. Pouran Azad, a.k.a. Pourandokt Aazad, a.k.a. Pourandokt Azad, with a last known address of 27333 Ursula Lane, Los Altos Hills, CA 94022; Sadr Emad-Vaez, a.k.a. Seid Sadredin Emad Vaez, with a last known address of 27333 Ursula Lane, Los Altos Hills, CA 94022; and Ghareh Sabz Co., a.k.a. Ghare Sabz Co., a.k.a. GHS Technology, with last known addresses of No. 446 Farjam St., Resalat Square, Tehran, Iran and No. 25 Farjam Ave., Resalat Square, Tehran, Iran, and when acting for or on their behalf, their successors, assigns, directors, officers, employees, representatives, and agents (each a ''Denied Person'' and collectively the ''Denied Persons''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Fourth,* no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Fifth,* after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization

related to a Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

*Sixth,* Respondents shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Charging Letter or this Order.

*Seventh,* the Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

*Eighth,* this Order shall be served on Respondents, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 8th day of July 2019.

**Douglas R. Hassebrock,**

*Director, Office of Export Enforcement, performing the non-exclusive functions and duties of the Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 2019–15055 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice of Scope Rulings

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable July 16, 2019.

**SUMMARY:** The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made between January 1, 2018, and March 31, 2018, inclusive. We intend to publish future lists after the close of the next calendar quarter.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–4735.

**SUPPLEMENTARY INFORMATION:**

#### Background

Commerce regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on March 14, 2019.[2] This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance between January 1, 2018, and March 31, 2018, inclusive.

*Scope Rulings Made Between January 1, 2018 and March 31, 2018*

Republic of Korea

A–580–878 and C–580–879: Certain Corrosion-Resistant Steel Products From Republic of Korea

*Requestor:* American Pan Company & Premier Pan Company Inc. The scope description of the orders is dispositive as to whether certain fluoropolymer-coated cut sheets are within the scope of the orders because: (1) They fall within the measurement ranges of the scope of the orders; (2) the chemical composition is within the requirements of the scope of the orders; (3) none of the further manufacturing performed in the United Kingdom removes the sheets from the scope of the orders; and (4) none of the specified exclusions apply to the imported sheets; January 2, 2018.

People's Republic of China

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

*Requestor:* Rowley Company. Rowley Company's drapery rod kits are not covered by the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (China) because they meet the criteria for the finished goods kit scope exclusion; March 1, 2018.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

*Requestor:* E–Z Up Inc. Six collapsible shelter frames are not covered by the scope of the AD and CVD orders on aluminum extrusions from China because they meet the criteria for the finished merchandise or finished goods kit scope exclusions; March 7, 2018.

A–570–814: Carbon Steel Butt-Weld Pipe Fittings; A–570–910 and C–570–911: Circular Welded Carbon-Quality Steel Pipe; A–570–930 and C–570–931: Circular Welded Austenitic Stainless Steel Pressure Pipe; and A–570–956 and C–570–957: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China

*Requestor:* SinoStruct Proprietary Limited (Sinostruct). Pipe spools produced in China by SinoStruct entirely from components produced in third countries that are not subject to any AD or CVD orders, and are exported to the United States by SinoStruct, are not within the scopes of the AD and CVD orders on carbon steel butt-weld pipe fittings; circular welded carbon-quality steel pipe; circular welded austenitic stainless steel pressure pipe; and seamless carbon and alloy steel standard, line, and pressure pipe from China; March 29, 2018.

A–570–814: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China

*Requestor:* Val-Fit, Inc. Val-Fit's butt-weld pipe fittings are not covered by the scope of the AD order on certain carbon steel butt-weld pipe fittings from China because the butt-weld fittings have openings with inside diameters both above and below the 14-inch threshold set forth in the scope of the order. Commerce found that the scope of the order on certain carbon steel butt-weld pipe fittings from China only covers butt-weld pipe fittings with inside diameters of less than 14 inches in diameter throughout the fitting. Since Val-fit's butt-welds have one or more opening greater than 14 inches, they not covered by the scope of the order on certain carbon steel butt-weld pipe fittings from China; February 12, 2018.

A–570–956 and C–570–957: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China

*Requestor:* Advance Engineering Corporation (AEC). Specialized seamless pipe (AEC Pipe) product imported by Advance Engineering Corporation are within the scope of the AD and CVD orders on certain seamless carbon and alloy steel standard, line, and pressure pipe from the China because AEC did not demonstrate that AEC Pipe met two of the exclusions—specifically the ASTM A–355 standard and aerospace specifications-enumerated in the scope language; March 29, 2018.

A–570–909: Certain Steel Nails From the People's Republic of China

*Requestor:* Simpson Strong-Tie Company. Crimp drive anchors (a type of masonry anchor) are covered by the scope of the AD order on certain steel nails from China because they meet the physical description of subject merchandise, as described in the scope of the order; March 6, 2018.

A–570–026 and C–570–027: Corrosion-Resistant Steel Products From the People's Republic of China

*Requestor:* Stoughton Trailer LLC. Composite panels (*i.e.,* manufactured composite goods consisting of sheets of corrosion-resistant steel bonded to a

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 84 FR 9295 (March 14, 2019).

plastic core) for semi-trailer enclosures are within the scope of the AD and CVD orders; January 12, 2018.

A–570–891: Hand Trucks and Certain Parts Thereof From the People's Republic of China

*Requestor:* Scotch Corporation. Scotch's Corporation's Bucket Master is not covered by the scope of the antidumping duty order on hand trucks and certain parts thereof from China, because it lacks a ''frame,'' as well as a ''projecting edge'' or ''toe plate,'' within the meaning of the scope of the order; January 18, 2018.

A–570–941 and C–570–942: Kitchen Appliance Shelving and Racks From the People's Republic of China

*Requestor:* Thermo Fisher Scientific LLC (Thermo Fisher). Thermo Fisher's freezer shelves are not covered by the scope of the AD and CVD orders on kitchen appliance shelving and racks from China because they are made of only sheet metal, whereas the scope of the orders requires that the subject merchandise be made primarily of steel wire; February 8, 2018.

A–570–922 and C–570–923: Raw Flexible Magnets From the People's Republic of China

*Requestor:* Magnetic Building Solutions, LLC. Flooring underlay imported from China (*i.e.,* raw flexible magnet sheet) is within the scope of the AD and CVD orders; March 6, 2018.

Interested parties are invited to comment on the completeness of this list of completed scope inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, 1401 Constitution Avenue NW, APO/Dockets Unit, Room 18022, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: July 9, 2019.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2019–14954 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–502]**

## Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily finds that producers or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR) May 1, 2017 through April 30, 2018. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable July 16, 2019.

**FOR FURTHER INFORMATION CONTACT:** Dmitry Vladimirov, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

**SUPPLEMENTARY INFORMATION:**

### Background

Commerce is conducting an administrative review of the antidumping duty order on welded carbon steel standard pipes and tubes (pipe and tube) from India. 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.[1]

The review covers 27 producers or exporters of the subject merchandise. We selected Apl Apollo Tubes Limited (Apollo) and Garg Tube Export LLP for individual examination.

### Scope of the Order

The merchandise subject to the order is pipe and tube. The pipe and tube subject to the order is currently classifiable under subheadings 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[2]

### Use of Facts Otherwise Available

We determine that the use of facts otherwise available with an adverse inference is appropriate for these preliminary results with respect to Apollo.[3]

### Treatment of Affiliated Parties as a Single Entity

We preliminarily determine that Garg Tube Export LLP and Garg Tube Limited, are affiliated as defined by section 771(33) of the Tariff Act of 1930, as amended (the Act), and should be treated as a single entity (herein after referred to as Garg Tube) for the purposes of Commerce's analysis in this administrative review.[4]

### Methodology

Commerce conducted this review in accordance with section 751(a)(2) of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and it is available to all parties in Commerce's Central Records Unit, located at Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

### Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping

[1] *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.

[2] *See* Memorandum, ''Welded Carbon Steel Standard Pipes and Tubes from India: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[3] For further discussion, *see* Preliminary Decision Memorandum, section titled ''Application of Facts Available with an Adverse Inference.''

[4] For further discussion, *see* Preliminary Decision Memorandum, section titled ''Affiliation and Collapsing.''

margins exist for the period May 1, 2017 through April 30, 2018.

| Producer or exporter | Weighted-average dumping margin (percent) |
|---|---|
| Apl Apollo Tubes Limited | 87.39 |
| Garg Tube Export LLP and Garg Tube Limited (collectively Garg Tube) | 18.55 |
| Asian Contec Ltd | 18.55 |
| Bhandari Foils & Tubes Ltd | 18.55 |
| Bhushan Steel Ltd | 18.55 |
| Blue Moon Logistics Pvt. Ltd | 18.55 |
| CH Robinson Worldwide | 18.55 |
| Ess-Kay Engineers | 18.55 |
| Manushi Enterprise | 18.55 |
| Nishi Boring Corporation | 18.55 |
| Fiber Tech Composite Pvt. Ltd | 18.55 |
| GCL Private Limited | 18.55 |
| Goodluck India Ltd | 18.55 |
| GVN Fuels Ltd | 18.55 |
| Hydromatik | 18.55 |
| Jindal Quality Tubular Ltd | 18.55 |
| KLT Automatic & Tubular Products Ltd | 18.55 |
| Lloyds Line Pipes Ltd | 18.55 |
| MARINEtrans India Private Ltd | 18.55 |
| Patton International Ltd | 18.55 |
| SAR Transport Systems Pvt. Ltd | 18.55 |
| Surya Global Steel Tubes Ltd | 18.55 |
| Surya Roshni Ltd | 18.55 |
| Welspun India Ltd | 18.55 |
| Zenith Birla (India) Ltd | 18.55 |
| Zenith Birla Steels Private Ltd | 18.55 |
| Zenith Dyeintermediates Ltd | 18.55 |

## Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[5] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[6]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Acting Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[7]

## Assessment Rates

Upon completion of the final results, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If Garg Tube's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If Garg Tube's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or de minimis, Commerce will instruct CBP to liquidate appropriate entries without regards to antidumping duties.

For entries of subject merchandise during the POR produced by Garg Tube for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries in accordance with the *Final Modification for Reviews*.[8]

For Apollo and the 25 companies which were not selected for individual examination,[9] we will instruct CBP to assess antidumping duties at a rate equal to each company's weighted-average dumping margin in the final results of this review.[10]

We intend to issue liquidation instructions to CBP fifteen days after publication of the final results of this review. The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of pipe and tube from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will be the all-others rate established in the less-than-fair-value investigation for this proceeding, 7.08 percent.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.303 (for general filing requirements).

[7] *See* 19 CFR 351.310(c).

[8] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[9] These companies are Asian Contec Ltd., Bhandari Foils & Tubes Ltd., Bhushan Steel Ltd., Blue Moon Logistics Pvt. Ltd., CH Robinson Worldwide, Ess-Kay Engineers, Manushi Enterprise, Nishi Boring Corporation, Fiber Tech Composite Pvt. Ltd., GCL Private Limited, Goodluck India Ltd., GVN Fuels Ltd., Hydromatik, Jindal Quality Tubular Ltd., KLT Automatic & Tubular Products Ltd., Lloyds Line Pipes Ltd., MARINEtrans India Private Ltd., Patton International Ltd., SAR Transport Systems Pvt. Ltd., Surya Global Steel Tubes Ltd., Surya Roshni Ltd., Welspun India Ltd., Zenith Birla (India) Ltd., Zenith Birla Steels Private Ltd., and Zenith Dyeintermediates Ltd.

[10] *See* Preliminary Decision Memorandum, section titled ''Rates for Respondents Not Selected for Individual Examination.''

[11] *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986).

occurred and the subsequent assessment of double antidumping duties.

### Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2019–15074 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–823–815]**

## Termination of the Suspension Agreement on Certain Oil Country Tubular Goods From Ukraine, Rescission of Administrative Review, and Issuance of Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 10, 2019, the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine (the Agreement) terminates. Accordingly, the Department of Commerce (Commerce) is issuing an antidumping duty (AD) order on certain oil country tubular goods (OCTG) from Ukraine. Commerce is directing the suspension of liquidation and collection of cash deposits to begin on July 10, 2019. Additionally, Commerce is rescinding the administrative review of the Agreement.

**DATES:** Applicable July 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sally C. Gannon or David Cordell, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–0408, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 22, 2013, Commerce initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (the Act) to determine whether imports of OCTG from Ukraine are being, or are likely to be, sold in the United States at less than fair value (LTFV).[1] On August 16, 2013, the U.S. International Trade Commission (ITC) notified Commerce of its affirmative preliminary injury determination in this case.[2] On February 14, 2014, Commerce preliminarily determined that OCTG is being, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Act. On this same date, Commerce also preliminarily determined that there is not a reasonable basis to believe or suspect that critical circumstances exist with respect to OCTG from Ukraine and postponed the final determination in this investigation until no later than July 10, 2014.[3]

Commerce and Interpipe and North American Interpipe (collectively, Interpipe) signed the Agreement on July 10, 2014, and the Agreement was published on July 18, 2014.[4] The terms of the Agreement stipulated that the Agreement would terminate on July 10, 2017.

Pursuant to section 734(g) of the Act, the investigation was continued based upon requests by Interpipe and Maverick Tube Corporation; United States Steel Corporation; Boomerang Tube LLC; EnergeX, division of JMC Steel Group; Northwest Pipe Company; Tejas Tubular Products, Inc.; TMK IPSCO; Welded Tube USA, Inc.; Wheatland Tube Company; and Vallourec Star L.P. (collectively, petitioners). Both Commerce's final determination and the ITC's final injury determination were affirmative.[5]

Following requests by Interpipe, on July 17, 2017, Commerce and Interpipe amended the Agreement to extend its term for one additional year, until July 10, 2018.[6] On July 5, 2018, at the request of Interpipe, Commerce and Interpipe amended the Agreement to extend the Agreement for one additional year, until July 10, 2019.[7]

On December 7, 2018, Interpipe requested an extension of the Agreement for an additional five years, until July 10, 2024.[8] On December 18, 2018, Commerce invited interested parties to comment on Interpipe's request.[9] On February 19, 2019, U.S. petitioning companies Maverick Tube Corporation, United States Steel Corporation, Vallourec Star, L.P., TMK IPSCO, and Welded Tube USA Inc., submitted comments opposing Interpipe's request and asking Commerce to allow the Agreement to terminate as scheduled, and proceed to issue an AD order on July 10, 2019.[10] Interpipe submitted additional comments in support of its request on the same day.[11]

[1] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 78 FR 45505 (July 29, 2013).

[2] *See Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam: Determinations,* Inv. Nos. 701–TA–499–500 and 731–TA–1215–1223 (Preliminary) USITC Pub. No. 4422, 78 FR 52213 (August 22, 2013).

[3] *See Certain Oil Country Tubular Goods from Ukraine: Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 79 FR 10482 (February 25, 2014).

[4] *See Suspension of Antidumping Duty Investigation: Certain Oil Country Tubular Goods from Ukraine,* 79 FR 41959 (July 18, 2014).

[5] *See Certain Oil Country Tubular Goods from Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 79 FR 41969 (July 18, 2014) (*Final Determination*) and *Certain Oil Country Tubular Goods from Ukraine: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 52303 (September 3, 2014) (*Amended Final Determination*). *See also Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam,* Inv. Nos. 701–TA–499–500 and 731–TA–1215–1223 (Final) USITC Pub. No. 4489, 79 FR 53080 (September 5, 2014) (*ITC Final Determination*).

[6] *See Amendment to the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,* 82 FR 32681 (July 17, 2017).

[7] *See Amendment to the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,* 83 FR 31369 (July 5, 2018).

[8] *See* Letter to Wilbur Ross, Secretary of Commerce, from Interpipe, ''Antidumping Duty Suspension Agreement on Certain Oil Country Tubular Goods from Ukraine: Request to Extend the Suspension Agreement'' (December 7, 2018) (Extension Request).

[9] *See* Memorandum to the File, ''Agreement Suspending the Antidumping Duty Investigation on Oil Country Tubular Goods from Ukraine: Request for Comment'' (December 18, 2018).

[10] *See* Letter to Wilbur Ross, Secretary of Commerce, from Maverick Tube Corporation, *et al.,* ''Comments in Opposition to Interpipe's Request to Further Extend for an Additional 5 Years the Agreement Suspending the Antidumping Investigation of Certain Oil Country Tubular Goods from Ukraine'' (February 19, 2019).

[11] *See* Letter to Wilbur Ross, Secretary of Commerce, from Interpipe, ''Antidumping Duty Suspension Agreement on Certain Oil Country Tubular Goods from Ukraine: Additional Letter in Support of Request to Extend Suspension Agreement'' (February 19, 2019).

On June 4, 2019, Commerce initiated and the ITC instituted a five-year sunset review of the OCTG suspended investigation.[12]

**Scope of the Order**

*See* Appendix I for a complete description of the scope of the AD order.

**Termination of Suspension Agreement**

On July 10, 2019, Commerce notified Interpipe of its decision not to extend the Agreement as requested by Interpipe and that the Agreement would terminate pursuant to Section H of the Agreement, which states (in part):

> This Agreement shall terminate five years after the effective date of this Agreement, on July 10, 2019. At that time, in the event the antidumping duty investigation with respect to OCTG from Ukraine is continued pursuant to section 734(g) of the Act and results in affirmative determinations, as referenced in sections 735(a)(1) and (b)(1) of the Act, by the Department and the International Trade Commission respectively, the Department shall issue an antidumping duty order and order the suspension of liquidation on entries of OCTG from Ukraine in accordance with section 735(c) of the Act.[13]

Therefore, pursuant to Section H of the Agreement, the Agreement terminates on July 10, 2019.

**Rescission of Administrative Review**

On September 10, 2018, Commerce initiated an administrative review of the Agreement for the period July 1, 2017 through June 30, 2018.[14] Because the Agreement terminates effective July 10, 2019, there is no longer an agreement of which to conduct an administrative review. Therefore, Commerce is rescinding the administrative review of the Agreement effective on the date of termination of the Agreement, *i.e.,* July 10, 2019.

**Antidumping Duty Order**

As noted above, the underlying investigation in this proceeding was continued pursuant to section 734(g) of the Act. Commerce made a final affirmative AD determination, and the ITC found material injury.[15] Therefore, in light of the termination of the Agreement and the final affirmative determinations issued by Commerce and ITC, in accordance with section 735(c)(2) of the Act, Commerce is issuing an AD order and will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after July 10, 2019. These suspension-of-liquidation instructions will remain in effect until further notice.

In accordance with section 736(a)(1) of the Act, Commerce is directing CBP to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all entries of OCTG from Ukraine subject to the scope of this order in Appendix 1 below.

Commerce also shall instruct CBP to require a cash deposit for each entry equal to the AD estimated weighted-average margin rates found in Commerce's *Amended Final Determination,* as listed below. Accordingly, for entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 10, 2019, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below. Therefore, effective July 10, 2019, CBP shall require a cash deposit equal to the cash deposit rates shown below. The all-others rate applies to all producers and exporters of subject merchandise not specifically listed. The *ad valorem* rates for this antidumping duty order are as follows:

| Manufacturer/exporter | Estimated weighted-average margin (percent) |
|---|---|
| Interpipe Europe S.A.; Interpipe Ukraine LLC; PJSC Interpipe Niznedneprovsky Tube Rolling Plant (aka Interpipe NTRP); LLC Interpipe Niko Tube | 7.47 |
| All Others | 7.47 |

**Notification to Interested Parties**

This notice constitutes the AD order with respect to OCTG from Ukraine pursuant to section 736(a) of the Act. Interested parties can find a list of AD orders currently in effect at *https://www.trade.gov/enforcement/.* This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix I: Scope of the Order**

The merchandise subject to this Order is certain oil country tubular goods (OCTG) from Ukraine, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of this order are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors. The merchandise subject to this Order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20,

[12] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 25741 (June 4, 2019).

[13] *See Suspension of Antidumping Duty Investigation: Certain Oil Country Tubular Goods from Ukraine,* 79 FR 41959 (July 18, 2014), amended in *Amendment to the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,* 82 FR 32681 (July 17, 2017), amended in *Amendment to the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,* 83 FR 31369 (July 5, 2018).

[14] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077, 50086 (October 4, 2018).

[15] *See Final Determination, Amended Final Determination,* and *ITC Final Determination,* respectively.

7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to this Order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the product coverage is dispositive.

[FR Doc. 2019–15073 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–900]**

### Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Determination of Anti-Circumvention Inquiry

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that Diamond Tools Technology (Thailand) Co., Ltd. (Diamond Tools) is circumventing the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China).

**DATES:** Applicable July 16, 2019.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 15, 2018, Commerce published the preliminary affirmative determination of circumvention of the antidumping duty order on diamond sawblades from China.[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] On April 4, 2019 [3] and May 31, 2019,[4] respectively, we extended the deadline of the final determination. The revised deadline for the final determination is July 10, 2019.

We received case and rebuttal briefs with respect to the *Preliminary Determination.* We conducted this anti-circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h).

#### Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under subheading 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[5] The written description is dispositive.

#### Scope of the Anti-Circumvention Inquiry

The products covered by this anti-circumvention inquiry are diamond sawblades made with Chinese cores and/or Chinese segments joined in Thailand by Diamond Tools and then subsequently exported from Thailand to the United States.[6]

#### Methodology

Commerce is conducting this anti-circumvention inquiry in accordance with section 781(b) of the Act and 19 CFR 351.225(h). For a full description of the methodology underlying the Commerce's final determination, *see* the Issues and Decision Memorandum. The Issues and Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an Appendix. Based on our analysis of the comments received, we made changes to the *Preliminary Determination.*

#### Final Affirmative Determination

As detailed in the Issues and Decision Memorandum, we determine that diamond sawblades made with Chinese cores and Chinese segments joined in Thailand by Diamond Tools and then subsequently exported from Thailand to the United States are circumventing the antidumping duty order on diamond sawblades from China. Therefore, we determine that it is appropriate to include this merchandise within the scope of the antidumping duty order and to instruct U.S. Customs and Border Protection (CBP) to continue to suspend any entries of diamond sawblades produced in Thailand by Diamond Tools with Chinese cores and Chinese segments and then subsequently exported from Thailand to the United States.

#### Final Negative Determination

As detailed in the Issues and Decision Memorandum, we determine that diamond sawblades made with Chinese cores and Thai segments or Chinese segments and Thai cores that are joined in Thailand by Diamond Tools and subsequently exported from Thailand to the United States are not circumventing the antidumping duty order on diamond

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Circumvention,* 83 FR 57425 (November 15, 2018) (*Preliminary Determination*).

[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* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Final Determination of Anti-Circumvention Inquiry,'' dated April 4, 2019.

[4] *See* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Final Determination of Anti-Circumvention Inquiry,'' dated May 31, 2019.

[5] *See* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of the Anti-Circumvention Inquiry,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum) at 2–3.

[6] *See Preliminary Determination,* 83 FR at 57425.

sawblades from China. Therefore, we are not including this merchandise within the scope of the antidumping duty order. However, as we explain below, we will instruct CBP to continue to suspend any entries of diamond sawblades produced in Thailand by Diamond Tools with either Chinese cores or Chinese segments and then subsequently exported from Thailand to the United States.

**Continued Suspension of Liquidation**

In accordance with 19 CFR 351.225(l)(3), based on this final determination in this anti-circumvention inquiry, Commerce will direct CBP to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of diamond sawblades produced (*i.e.,* assembled or completed) using Chinese cores and Chinese segments by Diamond Tools in Thailand that were entered, or withdrawn from warehouse, for consumption on or after December 1, 2017, the date of initiation of this anti-circumvention inquiry. The suspension of liquidation instructions will remain in effect until further notice. As we explained in the *Preliminary Determination,*[7] Commerce will instruct CBP to require antidumping duty cash deposits equal to the rate established for the China-wide entity, *i.e.,* 82.05 percent,[8] for entries of such merchandise produced by Diamond Tools.

As we explained above, diamond sawblades assembled or completed in Thailand using either Chinese cores and Thai segments or Thai cores and Chinese segments are not circumventing the antidumping duty order. Diamond sawblades assembled or completed in Thailand using both non-Chinese origin cores and non-Chinese origin segments are not subject to this anti-circumvention inquiry. Because Diamond Tools is not currently able to identify diamond sawblades produced with non-Chinese origin cores and/or non-Chinese origin segments,[9] in the *Preliminary Determination,* Commerce decided not to implement a certification process at the preliminary stage and required cash deposits on all entries of diamond sawblades produced by Diamond Tools in Thailand.[10] We invited parties to comment on this issue in their case briefs but no parties submitted comments on this issue. Therefore, for the final determination, we will not implement a certification process for diamond sawblades already suspended, and will require cash deposits on all entries of diamond sawblades produced by Diamond Tools in Thailand, consistent with the *Preliminary Determination.* However, Diamond Tools may request reconsideration of our denial of the certification process in a future segment of the proceeding, *i.e.,* a changed circumstances review or administrative review.[11]

**Administrative Protective Order**

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction or APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: July 10, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**



[FR Doc. 2019–15084 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–DS–P**

[7] *Id.* at 57426.

[8] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 64331, 64332 (December 14, 2018).

[9] *See Preliminary Determination,* 83 FR at 57426.

[10] *Id.*

[11] *See Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order,* 84 FR 29164 (June 21, 2019), and accompanying Issues and Decision Memorandum at 22.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Meeting of the Civil Nuclear Trade Advisory Committee

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

**DATES:** The meeting is scheduled for Wednesday, August 14, 2019, from 9:00 a.m. to 4:00 p.m. Eastern Daylight Time (EDT). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. Eastern Daylight Time (EDT) on Friday, August 9, 2019.

**ADDRESSES:** The meeting will be held at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 1412, 1401 Constitution Ave. NW, Washington, DC 20230. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Devin Horne, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Fax: 202–482–5665; email: *devin.horne@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

**FOR FURTHER INFORMATION CONTACT:** Mr. Devin Horne, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202–482–0775; Fax: 202–482–5665; email: *devin.horne@trade.gov*).

**SUPPLEMENTARY INFORMATION:**

*Background:* The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods

and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 10, 2018. This meeting is being convened under the sixth charter of the CINTAC.

*Topics to be considered:* The agenda for the Wednesday, August 14, 2018 CINTAC meeting is as follows:

Public Session 9:00 a.m.–4:00 p.m.

1. International Trade Administration's Civil Nuclear Trade Initiative Update
2. Civil Nuclear Trade Promotion Activities Discussion
3. Public comment period

Members of the public wishing to attend the meeting must notify Mr. Devin Horne at the contact information above by 5:00 p.m. EDT on Friday, August 9, 2019 in order to pre-register to participate. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted but may not be possible to fill. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Horne and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, August 9, 2019. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, August 9, 2019. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: July 11, 2019.

**Devin Horne,**

*Designated Federal Officer, Office of Energy and Environmental Industries.*

[FR Doc. 2019–15050 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH095**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold a meeting, which is open to the public.

**DATES:** The meeting will be held Wednesday, August 7 and Thursday, August 8, 2019, and will start at 8:30 a.m. and continue until business is concluded on each day.

**ADDRESSES:**

*Meeting address:* The meeting will be held at the Glenn M. Anderson Federal Building, 501 W Ocean Blvd., Long Beach, CA 90802, on the Third Floor in Room 3300.

Visitors need to present photo ID and pass through electronic security equipment to enter the building. There is no visitor parking available in the building for the general public. Metered street parking is nearby. Commercial parking lots are within walking distance to the building. For meeting location information, you may contact Lyle Enriquez by email at *Lyle.Enriquez@noaa.gov* or phone: (562) 980–4025.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

**SUPPLEMENTARY INFORMATION:** The purpose of the HMSMT meeting is to review the analysis of the range of alternatives (including the preliminary preferred alternative) for authorizing a fishery using deep-set buoy gear adopted by the Pacific Council in March 2019. The Pacific Council is scheduled to use this analysis to choose a final preferred alternative at its September 2019 meeting. The HMSMT may also discuss other HMS, administrative, or ecosystem items on upcoming Pacific Council meeting agendas and associated tasks. These items may include international management of HMS, review of exempted fishing permit proposals and related process issues, potential actions by the Pacific Council on the pelagic longline and large mesh drift gillnet fisheries, and updates to the HMS Stock Assessment and Fishery Evaluation document. An agenda listing candidate discussion topics will be made available on the Pacific Council website in advance of the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2411, at least 10 business days prior to the meeting date.

Dated: July 11, 2019.

**Tracey L. Thompson,**

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

[FR Doc. 2019–15078 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH094**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting (webinar).

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Climate and Communities Core

Team (CCCT) will hold a webinar, which is open to the public.

**DATES:** The webinar meeting will be held on Thursday, August 8, 2019, from 9 a.m. to 11:30 a.m. The webinar time is an estimate; the meeting will adjourn when business for the day is complete.

**ADDRESSES:** The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the webinar by visiting this link *https://www.gotomeeting.com/webinar* (click ''Join a Webinar'' in top right corner of page), (2) enter the Webinar ID: 592–373–147, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–415–655–0060 (not a toll-free number), (2) enter the attendee phone audio access code 850–419–766, and (3) enter the provided audio PIN after joining the webinar. You must enter this PIN for audio access. *Note:* We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 10, 8, 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps.*) You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at 503–820–2280, extension 411 for technical assistance. A public listening station will also be available at the Pacific Council office.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is for the Climate and Communities Core Team to plan tasks associated with the Pacific Council's climate change scenario planning exercise and discuss the contents of a Team report to be submitted for the September Council meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2411, at least 10 business days prior to the meeting date.

Dated: July 11, 2019.

**Tracey L. Thompson,**

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

[FR Doc. 2019–15077 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH093**

### 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 Mid-Atlantic Fishery Management Council's (Council) River Herring and Shad (RH/S) Advisory Panel will hold a meeting.

**DATES:** The meeting will be held on Monday, July 29, 2019, beginning at 1:30 p.m. and concluding by 4 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held via webinar with a telephone-only audio connection: *http://mafmc.adobeconnect.com/rhs-ap-2019/.* Telephone instructions are provided upon connecting, or the public can call direct: (800) 832–0736, Rm: *7833942#.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *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 purposes of the meeting are to review the 2019 RH/S Progress Update, review recent related staff and Monitoring Committee work, and provide input regarding possible modifications to the 2020 RH/S Cap for the Atlantic mackerel fishery.

### 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: July 11, 2019.

**Tracey L. Thompson,**

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

[FR Doc. 2019–15076 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH096**

### 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 Mid-Atlantic Fishery Management Council's (MAFMC) Bluefish Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Bluefish Advisory Panel.

**DATES:** The meeting will be held on Monday, August 26, 2019, from 9 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held via webinar with a telephone-only connection option. Details on the proposed agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's website: *www.mafmc.org.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *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 for the Advisory Panel to develop a fishery performance report (FPR). The intent of this report is to facilitate a venue for structured input from the Advisory

Panel for the bluefish specifications process. The FPR will be used by the MAFMC's Scientific and Statistical Committee (SSC) and the Bluefish Monitoring Committee (MC) when setting 2020–21 management measures designed to achieve the recommended bluefish catch and landings limits. In addition, this meeting will allow for discussion on the current status of the Bluefish Amendment.

**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 the meeting date.

Dated: July 11, 2019.

**Tracey L. Thompson,**

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

[FR Doc. 2019–15079 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[0648–XR015]**

### Endangered Species; File No. 23148

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Eddystone Generating Station has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application is for the incidental take of ESA-listed shortnose (*Acipenser brevirostrum*) and Atlantic sturgeon (*A. oxyrinchus*) associated with the otherwise lawful operation and maintenance of the facility. The duration of the proposed permit is 10 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

**DATES:** Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before August 15, 2019.

**ADDRESSES:** The application is available for download and review at *https://www.fisheries.noaa.gov/action/incidental-take-permit-eddystone-generating-station* under the section heading ESA Section 10(a)(1)(B) Permits and Applications. The application is also available upon written request or by appointment in the following office: Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13752, Silver Spring, MD 20910; phone (301) 427–8402; fax (301) 713–4060.

You may submit comments, identified by NOAA–NMFS–2019–0076, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0076* click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* (301) 713–4060; Attn: Celeste Stout.
- *Mail:* Submit written comments to Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13631, Silver Spring, MD 20910; Attn: Celeste Stout.

*Instructions:* You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Celeste Stout, Phone: (301) 427–8436 or Email: *celeste.stout@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** Section 9 of the ESA and Federal regulations prohibit the 'taking' of a species listed as endangered or threatened. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

**Background**

NMFS received a draft permit application from Eddystone Generating Station (''Eddystone'') on June 28, 2018. Based on our review of the draft application, we requested further information and clarification. On December 21, 2018, Eddystone submitted an application. Based on review of the application, NMFS and Eddystone held further discussions regarding what needed to be incorporated in the Habitat Conservation Plan (HCP). On June 21, 2019, Eddystone submitted a revised and complete application for the take of ESA-listed shortnose sturgeon and Atlantic sturgeon (New York Bight Distinct Population Segments) due to the operation of the cooling water intake structure (CWIS) and vessel activity associated with fuel delivery to the station.

Eddystone is requesting a total annual incidental take of shortnose and Atlantic sturgeon as follows:

Entrainment—An annual take limit of 3 Atlantic sturgeon larvae in entrainment sampling, commensurate with an annual take estimate of 3 age-1 equivalents;

Impingement—An annual take limit of three young-of-the-year (YOY) or older Atlantic sturgeon collected in impingement sampling, commensurate with an annual take estimate of seven YOY or older Atlantic sturgeon. And an annual take limit of three YOY or older shortnose sturgeon collected in impingement sampling, commensurate with an annual take estimate of seven YOY or older shortnose sturgeon; and

Interactions with Vessel Activity due to Oil Deliveries—A ten-year take limit for vessel activity of one Atlantic sturgeon. The first three-years of monitoring data collected under the permit will be analyzed to verify the requested total annual incidental take. As data are gathered and analyzed through monitoring, NMFS will amend the permit to reflect any changes in the take estimate, if appropriate.

*Conservation Plan*

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by Eddystone describes measures designed to minimize and mitigate the impacts of any incidental take of ESA-listed shortnose and Atlantic sturgeon. To avoid and minimize take of sturgeon, Exelon will only operate Eddystone's circulating

water pumps (CWPs): (1) When the station is generating electricity; and (2) for incidental maintenance or testing (generally once per month) (referred to collectively as ''Essential Station Operations''); or as required by a governmental agency or other entity with jurisdiction to require operations. Depending on station generation and ambient water temperatures, Exelon will also limit operations to one CWP per unit when possible. In addition, Exelon will rely on the river water pumps (RWPs) to provide cooling water for other critical station operations outside of Essential Station Operations. These measures will avoid and minimize the incidental take of sturgeon due to entrainment or impingement by eliminating or reducing water withdrawals at times when such withdrawals are not specifically required for Essential Station Operations or for governmental agency-mandated use. Additionally, Exelon will make all reasonable efforts to schedule fuel oil deliveries outside March 15–July 15.

Eddystone considered and rejected six alternatives: (1) Closed-Cycle Cooling; (2) Fine-Mesh Modified Ristroph Traveling Screens; (3) Cylindrical Wedgewire Screens; (4) Variable Speed Pumps; (5) Modified Ristroph Traveling Screens with a Fish Handling and Return System; and (6) Rail or Tanker Truck Delivery of Fuel Oil. The alternatives considered were determined to either be unfeasible, or to have no significant impact, or would result in an increase in adverse effects compared to the activity as proposed.

Eddystone is an existing facility and there are no construction activities planned, nor additional funding. Continued monitoring related to the take of shortnose and Atlantic sturgeon will be ongoing and funding will be provided through the facility's annual operating budget.

*National Environmental Policy Act*

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS intends to prepare an Environmental Assessment to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit.

*Next Steps*

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental takes of ESA-listed sturgeon. The final NEPA and permit determinations will not be made until after the end of the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: July 11, 2019.

**Angela Somma,**

*Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2019–15053 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH092**

### 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 Mid-Atlantic Fishery Management Council's (Council) River Herring and Shad (RH/S) Committee will hold a meeting.

**DATES:** The meeting will be held on Tuesday, July 30, 2019, beginning at 1:30 p.m. and concluding by 4:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held via webinar with a telephone-only audio connection: *http://mafmc.adobeconnect.com/rhs-com-2019/*. Telephone instructions are provided upon connecting, or the public can call direct: (800) 832–0736, Rm: *7833942#.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *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 purposes of the meeting are to review the 2019 RH/S Progress Update, review recent related staff and Monitoring Committee work, review Advisory Panel input, and consider making recommendations to the Council regarding possible modifications to the 2020 RH/S Cap for the Atlantic mackerel fishery.

**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: July 11, 2019.

**Tracey L. Thompson,**

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

[FR Doc. 2019–15075 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No.: PTO–P–2019–0025]**

### Office Patent Trial Practice Guide, July 2019 Update

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (''Office'') issued a further update to the Office Patent Trial Practice Guide (''TPG'') in July 2019 to provide updated guidance to the public on standard practices before the Patent Trial and Appeal Board (''Board'') in the post-grant trial procedures implemented following the Leahy-Smith America Invents Act (''AIA''). The Office published the TPG to provide practitioners with guidance on typical procedures and times for taking action in AIA trials, as well as to ensure consistency of procedure among panels of the Board.

**FOR FURTHER INFORMATION CONTACT:** Michael Tierney and William Fink, Vice Chief Administrative Patent Judges, by telephone at (571) 272–9797.

**SUPPLEMENTARY INFORMATION:** The Office issued a further update to the TPG in July 2019, to update the guidance set forth in the TPG by incorporating the Board's current practices and precedential decisions, and to provide further explanation of certain aspects of the Board's practices to the public. The Office previously issued an update to the TPG in August 2018. The TPG is

divided into sections, each directed to a particular stage of a typical AIA trial proceeding or a specific issue commonly encountered during such proceedings. Thus, the TPG contains informative material and outlines the current procedures that panels of the Board typically follow in appropriate cases in the normal course of an AIA trial proceeding. In order to expedite these updates and provide guidance to the public as quickly as possible, the Office has chosen to issue updates to the TPG on a section-by-section, rolling basis, rather than a single, omnibus update addressing all aspects of the current TPG. The Office anticipates releasing further revisions of the TPG on a periodic basis, to take into account feedback received from stakeholders, changes in controlling precedent or applicable regulations, or the further refinement of the Board's practices over time.

The July 2019 update revises Sections I.A.2. (Prohibition on *Ex Parte* Communications), I.E.4. (Protective Orders), I.F.2. (Additional Discovery), I.F.5. (Live Testimony), II.B.6. (Claim Construction), II.C. (Patent Owner Preliminary Response), II.D.2. (Considerations in Instituting a Review), II.D.3. (Content of Decision on Whether to Institute), II.G. (Motions to Amend), II.H. (Opposition to a Motion to Amend), II.I. (Reply to Patent Owner Response and Reply to Petitioner Opposition to a Motion to Amend), II.J. (Other Motions), II.O. (Final Decision), II.P. (Rehearing Requests), and Appendix B (Protective Order Guidelines).

The July 2019 update of the TPG, containing only the revised sections, may be viewed or downloaded from the USPTO website at *https://www.uspto.gov/TrialPracticeGuide3.* The TPG update from August 2018 is available at *https://go.usa.gov/xU7GP* and the full version of the August 2012 TPG continues to be available for reference on the USPTO website at *https://go.usa.gov/xU7GK.*

Dated: July 10, 2019.

**Andrei Iancu,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2019–15083 Filed 7–15–19; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Board of Visitors, National Defense University; Notice of Federal Advisory Committee Meeting

**AGENCY:** Office of the Chairman Joint Chiefs of Staff, 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 Board of Visitors, National Defense University will take place.

**DATES:** Monday, August 5, 2019 from 10:00 a.m. to 11:30 a.m.

**ADDRESSES:** Marshall Hall, Building 62, the National Defense University, 300 5th Avenue SW, Fort McNair, Washington, DC 20319–5066. Visitors should report to the Front Security Desk in the lobby of Marshall Hall and from there, they will be directed to the meeting room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian R. Shaw, (202) 685–4685 (Voice), (202) 685–3920 (Facsimile), *brian.r.shaw8.civ@mail.mil; brian.r.shaw.civ@ndu.edu; joycelyn.a.stevens.civ@mail.mil; stevensj7@ndu.edu* (Email). Mailing address is National Defense University, Fort McNair, Washington, DC 20319–5066. Website: *http://www.ndu.edu/About/Board-of-Visitors/.* The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

*Purpose of the Meeting:* The purpose of the meeting is to discuss NDU leadership roles and responsibilities. NDU's leadership structure must evolve to support the latest guidance in the National Security Strategy, National Defense Strategy, and National Military Strategy. NDU's current leadership structure is based on historical evolution rather than purposeful design. The proposed meeting would be for Board of Visitors discussion of the roles and responsibilities of NDU's Commandants and Chancellors in the leadership of NDU's colleges and delivery of academic programs.

*Agenda:* Monday, August 5, 2019 from 10:00 a.m. to 11:30 a.m. Welcome and Administrative Notes; NDU Leadership Roles and Responsibilities; Public Comment; Wrap-up and Closing Remarks.

*Meeting Accessibility:* Limited space made available for observers will be allocated on a first come, first served basis. Meeting location is handicap accessible. The Main Gate/Visitor's Gate on 2nd Street SW is open 24/7. All non-DoD/non-federally affiliated visitors MUST use this gate to access Fort McNair.

*ID Requirements:* A federal or state government-issued photo ID with biographic information such as name, date of birth and address is required. Security badges are not acceptable. All credentials are subject to screening and vetting by Installation Access Control personnel.

*Vehicle Search:* Non-DoD/non-federally affiliated visitors' vehicles are subject to search.

*Written Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by FAX or email to Ms. Joycelyn Stevens at (202) 685–0079, Fax (202) 685–3920 or *StevensJ7@ndu.edu.*

Dated: July 10, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–15017 Filed 7–15–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Health Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, 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 Health Board will take place.

**DATES:** Open to the public Tuesday, August 6, 2019 from 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** The address of the open meeting is Defense Health Headquarters (DHHQ), 7700 Arlington Blvd., Pavilion Salons B and C, Falls Church, VA

22042. (Pre-meeting screening for DHHQ access and registration required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility.'')

**FOR FURTHER INFORMATION CONTACT:** Captain Gregory Gorman, Medical Corps, U.S. Navy, (703) 275–6060 (Voice), (703) 275–6064 (Facsimile), *gregory.h.gorman.mil@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *http://www.health.mil/dhb.* The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

*Availability of Materials for the Meeting:* Additional information, including the agenda, will be available at the DHB website, *http://www.health.mil/dhb.* A copy of the agenda or any updates to the agenda for the August 6, 2019, meeting will be available on the DHB website. Any other materials presented in the meeting may be obtained at the meeting.

*Purpose of the Meeting:* The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific tasks before the DHB. In addition, the DHB will receive information briefings on current issues related to military medicine.

*Agenda:* The DHB anticipates receiving a decision brief on the Healthy Military Family Systems: Examining Child Abuse and Neglect Review, updates related to previously submitted DHB reports on Low-Volume High-Risk Surgical Procedures, Improving Defense Health Program Medical Research Processes, and Deployment Pulmonary Health, and an information briefing on Mental Health Accessions. Any changes to the agenda can be found at the link provided in the **SUPPLEMENTARY INFORMATION** section.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must register by emailing their name, rank/title, and organization/company to *dha.ncr.dhb.mbx.defense-health-board@mail.mil* or by contacting Ms. Theresa Fassig Normil at (703) 275–6012 no later than 12:00 p.m. on July 30, 2019. Members of the public who do not have DHHQ access will be required to provide additional information before access to DHHQ can be arranged by the DFB staff and, when required, this information must be provided to the DHB Designated Federal Officer (DFO), Captain Gorman at *gregory.h.gorman.mil@mail.mil* or (703) 275–6060 (voice).

*Special Accommodations:* Individuals requiring special accommodations to access the public meeting should contact Ms. Theresa Fassig Normil at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

*Written Statements:* Any member of the public wishing to provide comments to the DHB related to its current tasks may do so in accordance with section 10(a)(3) of the Federal Advisory Committee Act, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice. Written statements may be submitted to the DHB DFO, Captain Gorman, at *gregory.h.gorman.mil@mail.mil.* Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the DHB.

Dated: July 10, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–15015 Filed 7–15–19; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2019–ICCD–0078]**

## Agency Information Collection Activities; Comment Request; IES Research Training Program Surveys

**AGENCY:** Institute of Education Sciences (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before September 16, 2019.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0078. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Phil Gagne, 202–245–7139.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is

soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* IES Research Training Program Surveys.

*OMB Control Number:* 1850–0873.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* Individuals or Households.

*Total Estimated Number of Annual Responses:* 580.

*Total Estimated Number of Annual Burden Hours:* 197.

*Abstract:* The surveys are for participants in the fellowship research training programs and the non-fellowship research training programs funded by Institute of Education Sciences (IES). IES's fellowship programs include predoctoral training under the National Center for Education Research (NCER) and postdoctoral training under NCER and the National Center for Special Education Research (NCSER). These programs provide universities support to provide training in education research and special education research to graduate students (predoctoral program) and postdoctoral fellows. IES also supports non-fellowship research training through its current programs, *e.g.,* NCER's Methods Research Training program and NCER's Undergraduate Pathways program. IES would like to collect satisfaction information from the participants in these programs and other similar training programs funded through NCER or NCSER grant programs. The results of the surveys will be used both to improve the training programs as well as to provide information on the programs to the participants, policymakers, practitioners, and the general public. All information released to the public will be in aggregate so that no one program or training group can be distinguished.

Dated: July 11, 2019.

**Stephanie Valentine,**

*PRA Clearance Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.*

[FR Doc. 2019–15098 Filed 7–15–19; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–477]**

## Application To Export Electric Energy; American L&P Co dba American Light & Power

**AGENCY:** Office of Electricity, Department of Energy (DOE).

**ACTION:** Notice of Application.

**SUMMARY:** American L&P Co dba American Light & Power (Applicant or AL&P) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

**DATES:** Comments, protests, or motions to intervene must be submitted on or before August 15, 2019.

**ADDRESSES:** Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

**SUPPLEMENTARY INFORMATION:** The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On June 28, 2019, DOE received an application from AL&P for authorization to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. The Applicant states that its ''business is a licensed retail electric provider (REP) in the purchase and sale of wholesale electricity, capacity, and ancillary services at market-based rates in the Electric Reliability Council of Texas, Inc. (ERCOT) to Industrial, Medium and Small Commercial, and Residential customers throughout the Texas ERCOT deregulated market.''

The Application states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Mexico over international electric transmission facilities would be surplus energy purchased from third parties such as electric utilities and other suppliers within the United States. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

*Procedural Matters:* Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning AL&P's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–477. An additional copy is to be provided directly to Scott Evans, American Light & Power, 15810 Park Ten Place, Suite 380, Houston, TX 77084.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on July 10, 2019.

**Christopher Lawrence,**

*Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.*

[FR Doc. 2019–15054 Filed 7–15–19; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–312–B]**

### Application To Export Electric Energy; Emera Energy U.S. Subsidiary No. 2, Inc.

**AGENCY:** Office of Electricity, Department of Energy (DOE).

**ACTION:** Notice of application.

**SUMMARY:** Emera Energy U.S. Subsidiary No. 2, Inc. (Applicant or EE US No. 2) has applied to renew its authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

**DATES:** Comments, protests, or motions to intervene must be submitted on or before August 15, 2019.

**ADDRESSES:** Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

**SUPPLEMENTARY INFORMATION:** The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On November 18, 2014, DOE issued Order No. EA–312–A, which authorized EE US No. 2 to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authorization expires on November 18, 2019. On July 3, 2019, EE US No. 2 filed an application with DOE for renewal of the export authorization contained in Order No. EA–312–A for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties, such as electric utilities and Federal power marketing agencies, pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

*Procedural Matters:* Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning EE US No. 2's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–312–B. An additional copy is to be provided directly to Will Szubielski, Emera Energy, 5151 Terminal Road, Halifax, Nova Scotia B3J 1A1, Canada; A. Michael Burnell, Emera Energy U.S. Subsidiary No. 2, Inc., Suite 101, #37 Route 236, Kittery, Maine 03904; and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on July 10, 2019.

**Christopher Lawrence,**

*Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.*

[FR Doc. 2019–15052 Filed 7–15–19; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP19–485–000]**

### Notice of Request Under Blanket Authorization: Columbia Gas Transmission, LLC

Take notice that on July 2, 2019, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP19–485–000, a Prior Notice Request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000, requesting authorization to abandon six injection/withdrawal (I/W) wells, and associated appurtenances, and abandon in-place six associated pipelines totaling approximately 1.7 miles at the Lucas and Weaver Storage Fields located in Ashland County, Ohio. Columbia states the I/W wells have provided a de minimus contribution to the total field deliverability and casing replacement would not be cost effective due to the age of the facilities, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this prior notice should be directed to Sorana Linder, Director, Modernization & Certificates, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002, by telephone at (832) 320–5209, or by email at *sorana_linder@transcanada.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: July 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15068 Filed 7–15–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 8315–014]**

### Eagle Creek Sartell Hydro, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

July 10, 2019.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for temporary variance of Article 34.

b. *Project No.:* 8315–014.

c. *Date Filed:* July 9, 2019.

d. *Applicant:* Eagle Creek Sartell Hydro, LLC.

e. *Name of Project:* Sartell Dam Hydro Project.

f. *Location:* Mississippi River in Stearns and Benton counties, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Melissa Rondou, Eagle Creek Sartell Hydro, LLC, 116 N State Street, P.O. Box 167, Neshkoro, WI 54960, (920) 293–4628 ext. 347, *melissa.rondou@eaglecreekre.com.*

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 15 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket numbers P–8315–014.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a temporary variance from the run-of-river and reservoir elevation requirements of Article 34 of the license. The variance will allow the licensee to drawdown the reservoir approximately three feet beginning August 1, 2019, for a six-week period (from August 1 through approximately September 15, 2019). The drawdown is to assist the Minnesota Department of Natural Resources, the Little Rock Lake Association, and the Benton Soil and Water Conservation District to facilitate water quality, fish habitat, and restoration improvements in the reach of the Mississippi River upstream of the project, and at Little Rock Lake, located approximately six miles upstream of the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 385.2010.

Dated: July 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15062 Filed 7–15–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EF19–4–000]**

### Western Area Power Administration; Notice of Filing

Take notice that on June 24, 2019, Western Area Power Administration submitted tariff filing per: Extension of Formula Rates for the Central Valley Project, California-Oregon Transmission Project, Pacific Alternating Current Intertie, and Third-Party Transmission Service—Rate Order No. WAPA–185 to be effective October 1, 2019.

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than 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.

*Comment Date:* 5:00 p.m. Eastern Time on July 24, 2019.

Dated: July 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15064 Filed 7–15–19; 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 electric rate filings:

*Docket Numbers:* ER18–734–001.
*Applicants:* Frenchtown III Solar, LLC.
*Description:* Report Filing: Frenchtown III Refund Report to be effective N/A.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5050.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER18–1226–001.
*Applicants:* PA Solar Park, LLC.
*Description:* Report Filing: PA Solar Park Refund Report to be effective N/A.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5049.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER18–2063–001.
*Applicants:* Flemington Solar, LLC.
*Description:* Report Filing: Flemington Solar Refund Report to be effective N/A.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5052.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–1916–001.
*Applicants:* Louisville Gas and Electric Company.
*Description:* Compliance filing: Order No. 845 Additional Information Compliance Filing to be effective 5/22/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5087.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2165–001.
*Applicants:* Western Interconnect LLC.
*Description:* Compliance filing: Amendment to Order 845 Compliance Filing to be effective 5/22/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5063.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2231–001.
*Applicants:* Chief Conemaugh Power II, LLC.
*Description:* Tariff Amendment: Supplement to Petition for Market-Based Rate Authorization to be effective 8/21/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5089.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2232–001.
*Applicants:* Chief Keystone Power II, LLC.
*Description:* Tariff Amendment: Supplement to Petition for Market-Based Rate Authorization to be effective 8/21/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5092.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2369–000.
*Applicants:* Indigo Generation LLC.
*Description:* § 205(d) Rate Filing: Revised Market Based Rate Tariff to be effective 7/11/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5028.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2370–000.
*Applicants:* Larkspur Energy LLC.
*Description:* § 205(d) Rate Filing: Revised Market Based Rate Tariff to be effective 7/11/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5029.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2371–000.
*Applicants:* Mariposa Energy, LLC.
*Description:* § 205(d) Rate Filing: Revised Market Based Rate Tariff to be effective 7/11/2019.
*Filed Date:* 7/10/19.

*Accession Number:* 20190710–5034.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2373–000.
*Applicants:* Ashtabula Wind I, LLC.
*Description:* Baseline eTariff Filing: Ashtabula Wind I, LLC Application for Market-Based Rate Authority to be effective 9/9/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5041.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2374–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* § 205(d) Rate Filing: DEC–DEP Affected System Operating Agreement (SA No. 514) (Asheville CC) to be effective 6/19/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5091.
*Comments Due:* 5 p.m. ET 7/31/19.

*Docket Numbers:* ER19–2375–000.
*Applicants:* City Point Energy Center, LLC.
*Description:* Tariff Cancellation: Notice of Canellation of Market Based Rate Tariff to be effective 7/11/2019.
*Filed Date:* 7/10/19.
*Accession Number:* 20190710–5109.
*Comments Due:* 5 p.m. ET 7/31/19.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF95–328–009.
*Applicants:* EcoElectrica, L.P.
*Description:* Application for Commission Recertification of Qualifying Facility Status of EcoElectrica, L.P.
*Filed Date:* 7/9/19.
*Accession Number:* 20190709–5133.
*Comments Due:* 7/30/19.

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: July 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15067 Filed 7–15–19; 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 requester |
|---|---|---|
| Prohibited: | | |
| NONE. | | |
| Exempt: | | |
| CP17–494–000 ..... | 7–1–2019 | Congressman Kurt Schrader. |
| CP17–495–000. | | |

Dated: July 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15066 Filed 7–15–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP19–1091–001.
*Applicants:* American Midstream (Midla), LLC.
*Description:* Compliance filing Order No. 587–Y NAESB Filing to be effective 8/1/2019.
*Filed Date:* 7/8/19.
*Accession Number:* 20190708–5094.

*Comments Due:* 5 p.m. ET 7/22/19.

*Docket Numbers:* RP19–1378–000.

*Applicants:* Columbia Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing: TCO J. Aron Neg Rate Agmt Correction to be effective 6/1/2019.

*Filed Date:* 7/8/19.

*Accession Number:* 20190708–5121.

*Comments Due:* 5 p.m. ET 7/22/19.

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: July 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15063 Filed 7–15–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** July 18, 2019, 10:00 a.m.

**PLACE:** Room 2C, 888 First Street NE, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda. **Note.* Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1058TH—MEETING

Open Meeting; July 18, 2019; 10:00 a.m.

| Item No. | Docket No. | Company |
|---|---|---|
| | **ADMINISTRATIVE** | |
| A–1 | AD19–1–000 | Agency Administrative Matters. |
| A–2 | AD19–2–000 | Customer Matters, Reliability, Security and Market Operations. |
| | **ELECTRIC** | |
| E–1 | RM16–17–000 | Data Collection for Analytics and Surveillance and Market-Based Rate Purposes. |
| E–2 | RM19–2–000 | Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets. |
| E–3 | RM18–15–001 | Interlocking Officers and Directors; Requirements for Applicants and Holders. |
| E–4 | QF18–452–000 | North American Natural Resources, Inc. |
| E–5 | NJ19–10–000 | Western Area Power Administration. |
| E–6 | ER19–1876–000 | Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Duke Energy Florida, LLC. |
| E–7 | ER18–2370–001 | Lackawanna Energy Center LLC. |
| E–8 | ER19–585–001 | Quilt Block Wind Farm LLC. |
| E–9 | ER19–266–001 | Invenergy Nelson LLC. |
| E–10 | ER18–1222–005 | PSEG Energy Resources & Trade LLC. |
| E–11 | ER18–1737–002, ER18–1737–004 | Northern Indiana Public Service Company LLC. |
| E–12 | OMITTED. | |
| E–13 | ER14–2529–005, ER15–2294–004, ER16–2320–004 (consolidated). | Pacific Gas and Electric Company. |
| E–14 | ER11–2774–003 | Virginia Electric and Power Company. |
| | ER12–303–003 | Dominion Energy Generation Marketing, Inc., Dominion Energy Nuclear Connecticut, Inc., Dominion Bridgeport Fuel Cell, LLC, NedPower Mount Storm, LLC, Fowler Ridge Wind Farm; LLC, South Carolina Electric & Gas Company. |
| | ER11–2774–004 | Virginia Electric and Power Company, Dominion Energy Generation Marketing, Inc., Dominion Energy Nuclear Connecticut, Inc., Dominion Bridgeport Fuel Cell, LLC, Dominion Energy South Carolina, Inc. |
| E–15 | EL18–48–002 | *Gregory and Beverly Swecker* v. *Midland Power Cooperative and Central Iowa Power Cooperative.* |
| | QF11–424–007 | Gregory and Beverly Swecker. |
| E–16 | EL18–140–001 | *Consumers Energy Company, Interstate Power and Light Company, Midwest Municipal Transmission Group, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy* v. *International Transmission Company, ITC Midwest, LLC, and Michigan Electric Transmission Company.* |
| E–17 | OMITTED. | |
| E–18 | OMITTED. | |
| E–19 | EL15–70–000 | EL15–71–000 |

1058TH—MEETING—Continued

Open Meeting; July 18, 2019; 10:00 a.m.

| Item No. | Docket No. | Company |
|---|---|---|
| | EL15–72–000<br>*The People of the State of Illinois By Illinois Attorney General Lisa Madigan* v. *Midcontinent Independent System Operator, Inc.*.<br>*Southwestern Electric Cooperative, Inc.* v. *Midcontinent Independent System Operator, Inc., Dynegy, Inc., and Sellers of Capacity into Zone 4 of the 2015–2016 MISO Planning Resource Auction*.. | *Public Citizen, Inc.* v. *Midcontinent Independent System Operator, Inc.* |
| | **GAS** | |
| G–1 | PR17–60–001; PR17–60–002 | Atmos Pipeline—Texas. |
| G–2 | RP18–1126–001 | Transcontinental Gas Pipe Line Company, LLC. |
| | **HYDRO** | |
| H–1 | P–13–036 | Green Island Power Authority and Albany Engineering Corporation. |
| | **CERTIFICATES** | |
| C–1 | CP18–525–000 | Gulf South Pipeline Company, LP. |
| C–2 | CP19–3–000 | Gulf South Pipeline Company, LP. |
| C–3 | CP18–485–000 | CP18–486–000 |
| | CP18–505–000<br>Texas Eastern Transmission, LP; Transcontinental Gas PipeLine Company, LLC; Northern Natural Gas Company..<br>Texas Eastern Transmission, LP.. | Texas Eastern Transmission, LP; Transcontinental Gas PipeLine Company, LLC. |

Issued: July 11, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of

Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2019–15173 Filed 7–12–19; 11:15 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 3452–017]**

### Erie Boulevard Hydropower, L.P.; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 3452–017.

c. *Date Filed:* June 28, 2019.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Oak Orchard Hydroelectric Project.

f. *Location:* The project is located adjacent to the New York State Canal Corporation's barge canal in the Village of Medina, Orleans County, New York. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* Mr. Steven P. Murphy, Director, U.S. Licensing, Erie Boulevard Hydropower, L.P., 33 West 1st Street South, Fulton, NY 13069; (315) 598–6130; email *steven.murphy@brookfieldrenewable.com.*

i. *FERC Contact:* Laurie Bauer at (202) 502–6519; or email at *laurie.bauer@ferc.gov.*

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the

Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: August 27, 2019.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3452–017.

m. This application is not ready for environmental analysis at this time.

n. *The Oak Orchard Project consists of the following existing facilities:* (1) A concrete gravity dam containing a spillway with a crest elevation of 507.6 feet mean sea level (msl) surmounted by 2-foot-high flashboards and two 5-foot-high, 5-foot-wide flood gates; (2) a forebay with a surface area of 0.25 acres and a storage capacity of 3 acre-feet at the normal pool elevation of 509.6 feet msl; (3) an intake structure with trashracks; (4) a 7-foot-diameter, 85-foot-long welded steel penstock from the intake to the turbine; (5) a 20-foot-long, 43-foot-wide powerhouse containing a single turbine-generator unit with a rated capacity of 350 kilowatts; (6) a tailrace located on the left (west) bank of Oak Orchard Creek; (7) a 55-foot-long underground generation lead; (8) three single-phase 167 kilovolt-ampere pole-mounted power transformers; (9) a 400-foot-long access road; and (10) appurtenant facilities.

The Oak Orchard Project is operated in a run-of-river mode with an average annual generation of 1,147 megawatt-hours between 2009 and 2018.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—August 2019
Request Additional Information—August 2019
Issue Acceptance Letter—November 2019
Issue Scoping Document 1 for comments—December 2019
Request Additional Information (if necessary)—February 2020
Issue Scoping Document 2—March 2020
Issue notice of ready for environmental analysis—March 2020
Commission issues EA—September 2020
Comments on EA—October 2020

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: July 10, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–15065 Filed 7–15–19; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2019–0271; FRL–9995–62]**

## Certain New Chemicals or Significant New Uses; Statements of Findings for April 2019

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

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from April 1, 2019 to April 30, 2019.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–8469; email address: *schweer.greg@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0097, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

### II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from April 1, 2019 to April 30, 2019.

### III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

## IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

| EPA case No. | Chemical identity | Website link |
|---|---|---|
| P–19–0020 | Alkylphenol, reaction products with carbon dioxide, distn. residues from manuf. of alkylphenol derivs. and calcium alkylphenol derivs. (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-227.* |
| P–18–0247–0252 | (P–18–0247) Isocyanic acid, polymethylenepolyphenylene ester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, polyetherpolyol, .alpha.,alpha.′-[(1- methylethylidene)di-4,1-phenylene]bis[.omega.-hydroxypoly(oxy-1,2-ethanediyl)] and 1,2-propanediol, iso-Bu alc.- and 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and Et alc.- and methanol- and 1-methoxy-2-propanol-blocked (generic name), (P–18–248) Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol blocked (generic name), (P–18–249) Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol and 1-methoxy-2-propanol-blocked (generic name), (P–18–0250) Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and 1(or2)-(2-methoxymethylethoxy)propanol-blocked (generic name), (P–18–0251) Isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1(or2)-(2-methoxymethylethoxy)propanol-blocked (specific name), (P–18–0252) Isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1-methoxy-2-propanol-blocked (specific name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-222.* |
| P–17–0253 | Oxirane, 2-methyl-, polymer with oxirane, methyl 2-(substituted carbomonocycle isoquinolin-2(3H)-yl) propyl ether (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-218.* |
| P–17–0245 | Unsaturated polyfluoro ester (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-208.* |
| P–17–0152 | Poly-(2-methyl-1-oxo-2-propen-1-yl) ester with Ethanaminium, N,N,N-trialkyl, chloride and methoxypoly(oxy-1,2-ethanediyl) (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-207.* |
| P–16–0422 | 1,2-Cyclohexanedicarboxylic acid, 1-(phenylmethyl) ester, ester with 2,2,4-trimethyl-1,3-pentanediol mono(2-methylpropanoate) (CASRN: 1661012–65–2). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-206.* |
| P–14–0482 | Organic salt (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-205.* |
| P–19–0046 | 1,2,4-Benzenetricarboxylic acid, mixed decyl and octyl triesters (CASRN: 90218–76–1). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-204.* |

| EPA case No. | Chemical identity | Website link |
|---|---|---|
| P–18–0266 | Alkanes, C20-45 branched and linear (CASRN: 2133415–24–2) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-203.* |
| P–18–0305 | Alkenoic acid, alkyl-,alkyl ester, polymer with alkyl alkenoate, substituted heteromonocycle, substituted carbomonocycle, substituted alkanediol and alkenoic acid, alkali metal salt (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-200.* |
| P–18–0186 | Polyolefin ester (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-199.* |
| J–19–0012–0015 | Biofuel producing *Saccharomyces cerevisiae* modified, genetically stable (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-198.* |
| J–19–0017 | Genetically modified microorganism for the production of a chemical substance (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-197.* |
| J–19–0011 | Genetically modified microorganism for the production of a chemical substance (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-196.* |
| P–19–0045 | Non-metal tetrakis (hydroxyalkyl)-, halide, polymer with amide oxidized (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-195.* |
| P–19–0032 | Carbonic dichloride, polymer with 4,4′-(1-methylethylidene)bis[phenol] ester, polymer with tetrol and polyether tetrol (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-194.* |
| P–19–0030 | Triethanolamine modified Phosphinicocarboxylates, sodium salts (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-193.* |
| P–18–0375 | Fats and Glyceridic oils, vegetable, sulfonated, sodium salts (CASRN: 97489–04–8). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-192.* |
| P–18–0312 | Formaldehyde, polymer with 2-phenoxyalkanol and .alpha.-phenyl-.omega. hydroxypoly(oxy-1,2-alkylnediyl), dihydrogen phosphate 2-phenoxyalkyl hydrogen phosphate, alkaline salt (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-191.* |
| P–18–0122 | Alkylamide, polymer with alkylamine, formaldehyde, and polycyanamide, alkyl acid salt (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-190.* |
| P–19–0040 | Alkyl bis(dialkylamino alkyl) amide (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-189.* |
| P–19–0010 | Hydrogenated fatty acid dimers, polymers with 1,1′-methylenebis[4-isocyanatobenzene], polypropylene glycol, polypropylene glycol ether with trimethylolpropane (3:1), and 1,3-propanediol, propylene glycol monomethacrylate-blocked (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-188.* |
| P–18–0222 | Silane, alkenylalkoxy-, polymer with alkene and alkene (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-187.* |
| P–18–0162 | Cashew nutshell liquid, polymer with diisocyanatoalkane, substituted-polyoxyalkyldiol and polyether polyol (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-186.* |
| P–17–0239 | Substituted carboxylic acid, polymer with 2,4-diisocyanato-1-methylbenzene, hexanedioic acid, alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2- ethanediyl)], 1,1′-methylenebis[4-isocyanatobenzene], 2,2′-oxybis[ethanol], 1,1′-oxybis[2-propanol] and 1,2-propanediol. (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-185.* |
| P–18–0073 | Sulfuric acid, ammonium salt (1:?) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-184.* |
| P–18–0048 | Acetic acid, 2-(2-butoxyethoxy)- (CASRN: 82941–26–2) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-183.* |
| P–17–0284 | 2-Heptanone, 4-hydroxy- (CASRN: 25290–14–6) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-182.* |
| P–17–0285 | 4-Hepten-2-one (CASRN: 24332–22–7) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-181.* |
| P–19–0037 | D-Glucaric acid, mixed alkali metal salt (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-179.* |
| P–16–0602 | Carbonic acid, dialkyl ester, polymers with 5-amino-1,3,3-trimethylcycloalkanemethanamine, 2-ethyl-1-alcohol-blocked 1,6-diisocyanatoalkane homopolymer and 1,6-alkanediol and trimethylolakane (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-178.* |
| P–16–0446 | Fatty acids, reaction products with alkylamine, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle and substituted alkanoate, lactates (salts) (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-177.* |
| P–19–0003 | Polyaromatic ether symmetrical dicarboxylic anhydride (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-176.* |
| P–18–0174 | Enzyme (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-175.* |
| P–19–0027 | Substituted carbomoncycle, polymer with haloalkyl substituted heteromonocycle,dialkyl-alkanediamine and hydro-hydroxypoly[oxy(alkylalkanediyl)], reaction products with metal oxide and dialkanolamine, acetates (salts) (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-171.* |

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: July 3, 2019.

**Leo Schweer,**

*Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2019–15004 Filed 7–15–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2019–0271; FRL–9995–83]**

## Certain New Chemicals or Significant New Uses; Statements of Findings for May 2019

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

**ACTION:** Notice.

**SUMMARY:** Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from May 1, 2019 to May 31, 2019.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–8469; email address: *schweer.greg@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0097, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

### II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from May 1, 2019 to May 31, 2019.

### III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

### IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the

''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

| EPA case No. | Chemical identity | Website link |
|---|---|---|
| P–18–0282 | Fatty acid ester, polyether, diisocyanate polymer (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-234.* |
| P–17–0108 | Carbonodithioic acid, O-[2-[(dithiocarboxy)amino]-2-methylpropyl] ester, sodium salt (1:2) (CASRN: 1947332–67–3). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-233.* |
| P–16–0429 | Endcapped polysiloxane (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-232.* |
| P–16–0225 | Isomer mixture of Cyclohexanol, 4-ethylidene-2-propoxy- (CASRN: 1631145–48–6) (35–45%) and Cyclohexanol, 5-ethylidene-2-propoxy- (CASRN: 1631145–49–7). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-231.* |
| P–16–0470 | 2,7-Nonadien-4-ol, 4,8-dimethyl- (CASRN: 103983–77–3) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-230.* |
| P–19–0034 | Metal, bis(2,4-pentanedionato-kO2,kO4)-, (T-4)-, (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-229.* |
| P–19–0028 | Alkyl salicylate, metal salts (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-228.* |
| P–19–0004 | Aromatic dianhydride, polymer with aromatic diamine and heteroatom bridged aromatic diamine, reaction products with aromatic anhydride (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-226.* |
| P–18–0322 | Heteromonocycle, 4,6-dimethyl-2-(1-phenylethyl)- (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-225.* |
| P–18–0321 | Poly(oxy-ethanediyl), (methyl ethanediyl)bis[hydroxy-, (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-224.* |
| P–18–0270 | Ethanol, 2-butoxy-, 1,1′-ester (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-223.* |
| P–18–0234 | Alkenoic acid, reaction products with bis substituted alkane and ether polyol (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-221.* |
| P–18–0228 | Branched alkenyl acid, alkyl ester, homopolymer (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-220.* |
| P–18–0091 | Vegetable oil, polymers with diethylene glycol- and polyol- and poly-ethylene glycol-depolymd poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-219.* |
| P–16–0425 | Amino-silane (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-217.* |
| P–16–0314 | Ethanone, 1-(5-propyl-1,3-benzodioxol-2-yl)- | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-216.* |
| J–19–0018 | Protein-producing modified microorganism, with chromosomally-borne modifications (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-215.* |
| P–18–0339 | Alkyl heteromonocycle with heteroatom substituted alkyl cycloalkane and 2-hydroxyethyl heteromonocycle methacrylate-blocked homopolymer (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-214.* |
| P–18–0220 | Heteromonocycle [(alkylalkylidene)bis (substituted carbomoncycle)]bis-, polymer with alkyl isocyanate, alkenoate (ester) (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-213.* |
| P–18–0120 | 1H-Pyrrole-2,5-dione, 1,1′-C36-alkylenebis- (CASRN: 1911605–95–2) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-212.* |
| P–19–0057 | Alkanamine, [(Alkoxy)alkoxy]alkyl] alkyl (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-211.* |
| P–19–0056, P–19–0060–0061. | (P–19–0056) Aliphatic hydrocarbons, C8–C20-branched and linear, (P–19–0060) Aliphatic hydrocarbons, C8–C18-branched and linear, (P–19–0061) Aliphatic hydrocarbons, C16–20-branched and linear (generic names). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-210.* |
| P–19–0054 | Polyamines, reaction products with succinic anhydride polyalkenyl derivs, metal salts, Polyamines, reaction products with succinic anhydride polyalkenyl derivs, metal salts (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-209.* |
| P–18–0188 | Alkyl substituted alkenoic acid, alkyl ester, polymer with alkanediol alkyl-alkenoate, reaction products with alkenoic acid, isocyanato-(isocyanatoalkyl)-alkyl substituted carbomonocycle and substituted alkanediol (generic name). | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-202.* |
| P–18–0406 | Formaldehyde, polymer with alkyl aryl ketones (generic name) | *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-201.* |

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: July 3, 2019.

**Leo Schweer,**

*Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2019–15039 Filed 7–15–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2017–0026; FRL 9993–96]**

## Statutory Requirements for Substantiation of Confidential Business Information (CBI) Claims Under the Toxic Substances Control Act (TSCA)

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

**ACTION:** Notice.

**SUMMARY:** On January 19, 2017, EPA announced an interpretation of section 14 of the Toxic Substances Control Act (TSCA). Under this interpretation, non-exempt confidential business information (CBI) claims must be substantiated at the time the information claimed as CBI is submitted to EPA, and non-exempt CBI claims submitted without a substantiation are considered deficient. To facilitate compliance with the change in interpretation, EPA announced it would undertake a non-statutorily required

practice of sending a notice of deficiency to an affected business that submitted a non-exempt CBI claim without a substantiation, providing an opportunity to correct the deficiency. The Agency also sent out notices of deficiency in instances where there were other procedural flaws in the submission, namely where the required CBI certification statement was not provided, or no generic name was provided when specific chemical identity was claimed as CBI. EPA's extensive outreach on this interpretation over the past two years has been effective. As such, EPA is announcing it is revising its policy and that it will cease sending these non-statutorily required notices of deficiency to businesses who submit procedurally flawed CBI claims. This action makes more efficient EPA's implementation of the TSCA section 14(g) requirement to review within 90 days of receipt all CBI claims for chemical identity, with limited exceptions, as well as to review a representative subset of at least 25% of other non-exempt claims.

**FOR FURTHER INFORMATION CONTACT:**

*For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

*For technical information contact:* Scott M. Sherlock, Attorney Advisor, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov.*

**DATES:** This action is effective on August 15, 2019.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

This announcement is directed to the public in general. It may be of particular interest to businesses that manufacture (defined by statute to include import) and/or process chemicals covered by TSCA (15 U.S.C. 2601 *et seq.*). This may include businesses identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this action is directed to the general public and other entities also may be interested, the Agency has not attempted to describe all of the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

1. *Docket.* EPA has established a docket for this action under docket identification number EPA–HQ–OPPT–2017–0026. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 available publicly only in hard copy. Publicly available docket materials may be found electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Other related information.* For information about EPA's programs to evaluate new and existing chemicals and their potential risks and the amended TSCA, go to *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act.*

## II. What action is the Agency taking?

On June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which amended TSCA, was signed into law. The amended TSCA provides new requirements relating to the assertion, substantiation, and review of CBI claims. On January 19, 2017, EPA published an interpretation of TSCA section 14(c)(3), indicating that the provision requires substantiation of all TSCA CBI claims at the time the information claimed as CBI is submitted to EPA, except for claims for information that are exempt from substantiation requirements by virtue of TSCA section 14(c)(2), (82 FR 6522, FRL–9958–34). This statutory interpretation was announced as effective within two months.

To give time for submitters to adjust to the new requirements, EPA announced that it would send a notice of deficiency to an affected business that submitted non-exempt CBI claims without substantiation on or after March 20, 2017, providing 30 days to submit the required substantiation. EPA also indicated on its website that it would send out notices of deficiency when there were other procedural flaws related to the CBI claims in a submission, including a failure to provide either a certification statement as required under TSCA section 14(c)(1)(B) and (c)(5), or a generic name required under TSCA section 14(c)(1)(C) when specific chemical identity is claimed as confidential. If the procedural flaws were not addressed within 30 days of receipt of the notice, then the CBI claims would be considered withdrawn and the information could be made public with no further notice.

Since the publication of the announcement the EPA has engaged in a variety of communications and outreach activities to educate the interested public on the interpretation. The EPA has facilitated or participated in webinars, and meetings with members of the public. EPA has also engaged via telephone with TSCA submitters, trade groups, and others on the requirements of TSCA section 14. EPA has also updated its web pages on CBI, to provide detailed guidance to facilitate compliance with the new requirements of TSCA. EPA has notified interested persons of the web page updates via listserv communications. The communications and outreach have been effective: Since the March 21, 2017 effective date of the interpretation, EPA has sent out 984 notices of deficiency, the vast majority which relate to submissions received before March 21, 2017. Only 97 notices have been generated, to date, that related to filings directed to EPA after March 21, 2017.

Over two years have passed since the announcement of the section 14(c)(3) interpretation, so the interpretation is no longer new, and companies have had ample notice of the requirements. Therefore, EPA is phasing out the practice of sending notices of deficiency. This action makes more efficient EPA's implementation of the TSCA section 14(g) requirement to review within 90 days of receipt all CBI claims for chemical identity, with limited exceptions, as well as to review

a representative subset of at least 25% of other non-exempt claims.

### III. What is the Agency's authority for taking this action?

TSCA section 14(c)(3), 15 U.S.C. 2613(c)(3), requires an affected business to substantiate all TSCA CBI claims at the time the affected business asserts the claim to EPA, except for information subject to TSCA section 14(c)(2).

TSCA section 14(c)(1)(a) requires an affected business to assert a claim for protection from disclosure concurrent with submission of the information in accordance with existing or future EPA rules.

TSCA imposes no requirement to provide notices of deficiency to affected businesses. EPA chose to do so to facilitate compliance with the statutory requirement.

### IV. Implementation

Beginning on August 15, 2019, EPA will no longer send out notices of deficiency in instances where submissions containing non-exempt information claimed as CBI do not include substantiation for all such claims, and where the CBI claims have other procedural flaws such as a missing certification statement or, in the case of specific chemical identity CBI claims, a missing generic name. Instead, the Agency will provide written notice to affected business submitters that those CBI claims are invalid, and the underlying information is treated as not subject to a confidentiality claim, and therefore subject to disclosure without further notice.

This action is consistent with the Agency's overall efforts to be more efficient in the implementation of TSCA section 14 requirements. EPA will continue to assist submitters with compliance with TSCA section 14(c)(3) and has revised its web pages at *https://www.epa.gov/tsca-cbi* to include additional information on this policy, the substantiation questions from 40 CFR 2.204(e), suggested substantiation templates, substantiation exemptions and how the substantiations should be directed to the Agency.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: July 10, 2019.

**Alexandra Dapolito Dunn,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2019–15005 Filed 7–15–19; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0010 and OMB 3060–0084]**

### Information Collections Being Submitted for Review and Approval to Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before August 15, 2019. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

*OMB Control Number:* 3060–0010.

*Title:* Ownership Report for Commercial Broadcast Stations, FCC Form 323; Section 73.3615, Ownership Reports; Section 74.797, Biennial Ownership Reports.

*Form Number:* FCC Form 323.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions; State, Local, or Tribal Governments.

*Number of Respondents:* 4,340 respondents; 4,340 responses.

*Estimated Time per Response:* 1.5 to 2.5 hours.

*Frequency of Response:* On occasion reporting requirement; biennial reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for these collections are contained in *47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 309,* and *310.*

*Total Annual Burden:* 9,620 hours.

*Total Annual Cost:* $10,125,160.

*Privacy Impact Assessment:* The Commission is drafting a Privacy Impact

Assessment (PIA) for the personally identifiable information (PII) that is covered by the system of records notice (SORN), FCC/MB–1, Ownership Reports for Commercial and Noncommercial Broadcast Stations. Upon completion of the PIA, it will be posted on the FCC's website, as required by the Office of Management and Budget (OMB) Memorandum, M–03–22 (September 22, 2003).

*Nature and Extent of Confidentiality:* FCC Form 323 collects two types of information from respondents: PII in the form of names, addresses, job titles and demographic information; and FCC Registration Numbers (FRNs).

The FCC/MB–1 SORN, which was approved on November 28, 2016 (*81 FR 72047*), covers the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323, as required under the Privacy Act of 1974, as amended (*5 U.S.C. 552a*). FCC Form 323 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the Commission has in place to protect the PII.

FRNs are assigned to applicants who complete FCC Form 160 (OMB Control No. 3060–0917). Form 160 currently requires applicants for FRNs to provide their Taxpayer Information Number (TIN) and/or Social Security Number (SSN). The FCC's electronic Commission Registration System (CORES) then provides each registrant with a CORES FRN, which identifies the registrant in his/her subsequent dealings with the FCC. This is done to protect the individual's privacy.

FCC Form 160 also enables applicants to obtain a Restricted Use FRN, which may be used on Form 323 to identify an individual reported as an attributable interest holder. Form 160 requires applicants for Restricted Use FRNs to provide an alternative set of identifying information that does not include the individual's full SSN: His/her full name, residential address, date of birth, and only the last four digits of his/her SSN. Restricted Use FRNs may be used in lieu of CORES FRNs only on broadcast ownership reports and only for individuals (not entities) reported as attributable interest holders.

The Commission maintains a SORN, FCC/OMD–25, Financial Operations Information System (FOIS), to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 160. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

*Needs and Uses:* Licensees of commercial AM, FM, and full power television broadcast stations, as well as licensees of Class A and Low Power Television broadcast stations, must file FCC Form 323 every two years. Biennial Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Form 323 shall be filed by December 1 in all odd-numbered years.

In addition, Licensees and Permittees of commercial AM, FM, and full power television broadcast stations must file Form 323 following the consummation of a transfer of control or an assignment of a commercial AM, FM, or full power television broadcast station license or construction permit; a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 within 30 days after the grant of the construction permit; and a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee or Permittee.

*OMB Control Number:* 3060–0084.

*Title:* Ownership Report for Noncommercial Educational Broadcast Stations, FCC Form 323–E; Section 73.3615, Ownership Reports.

*Form Number:* FCC Form 323–E.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Not-for-profit institutions.

*Number of Respondents:* 2,636 respondents; 2,636 responses.

*Estimated Time per Response:* 1 to 1.5 hours.

*Frequency of Response:* On occasion reporting requirement; biennial reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for these collections are contained in *47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 308, 309,* and *310.*

*Total Annual Burden:* 3,867 hours.

*Total Annual Cost:* $2,319,900.

*Privacy Impact Assessment:* The Commission is drafting a Privacy Impact Assessment (PIA) for the personally identifiable information (PII) that is covered by the system of records notice (SORN), FCC/MB–1, Ownership Reports for Commercial and Noncommercial Broadcast Stations. Upon completion of the PIA, it will be posted on the FCC's website, as required by the Office of Management and Budget (OMB) Memorandum, M–03–22 (September 22, 2003).

*Nature and Extent of Confidentiality:* FCC Form 323–E collects two types of information from respondents: PII in the form of names, addresses, job titles and demographic information; and FCC Registration Numbers (FRNs).

The FCC/MB–1 SORN, which was approved on November 28, 2016 (*81 FR 72047*), covers the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323–E, as required under the Privacy Act of 1974, as amended (*5 U.S.C. 552a*). FCC Form 323–E includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the Commission has in place to protect the PII.

FRNs are assigned to applicants who complete FCC Form 160 (OMB Control No. 3060–0917). Form 160 currently requires applicants for FRNs to provide their Taxpayer Information Number (TIN) and/or Social Security Number (SSN). The FCC's electronic Commission Registration System (CORES) then provides each registrant with a CORES FRN, which identifies the registrant in his/her subsequent dealings with the FCC. This is done to protect the individual's privacy.

FCC Form 160 also enables applicants to obtain a Restricted Use FRN, which may be used on Form 323–E to identify an individual reported as an attributable interest holder. Form 160 requires applicants for Restricted Use FRNs to provide an alternative set of identifying information that does not include the individual's full SSN: His/her full name, residential address, date of birth, and only the last four digits of his/her SSN. Restricted Use FRNs may be used in lieu of CORES FRNs only on broadcast ownership reports and only for individuals (not entities) reported as attributable interest holders.

The Commission maintains a SORN, FCC/OMD–25, Financial Operations Information System (FOIS), to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 160. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need

to obtain the information and the protections that the FCC has in place to protect the PII.

*Needs and Uses:* Licensees of noncommercial educational AM, FM, and television broadcast stations must file FCC Form 323–E every two years. Biennial Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Form 323–E shall be filed by December 1 in all odd-numbered years.

In addition, Licensees and Permittees of noncommercial educational AM, FM, and television broadcast stations must file Form 323–E following the consummation of a transfer of control or an assignment of a noncommercial educational AM, FM, or television broadcast station license or construction permit; a Permittee of a new noncommercial educational AM, FM, or television broadcast station must file Form 323–E within 30 days after the grant of the construction permit; and a Permittee of a new noncommercial educational AM, FM, or television broadcast station must file Form 323–E to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate Form 323–E must be filed for each entity in the organizational structure that has an attributable interest in the Licensee or Permittee.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2019–15109 Filed 7–15–19; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

**[OMB No. 3064–0188]**

### Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (3064–0188).

**DATES:** Comments must be submitted on or before September 16, 2019.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Jones, Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** *Proposal to renew the following currently approved collection of information:*

1. *Title:* Appraisal for Higher-Priced Mortgage Loans.

*OMB Number:* 3064–0188.

*Form Number:* None.

*Affected Public:* Insured state nonmember banks and state savings associations.

*Burden Estimate:*

SUMMARY OF ANNUAL BURDEN AND INTERNAL COST

| Information collection (IC) description | Type of burden | Obligation to respond | Estimated number of respondents | Estimated frequency of responses | Estimated time per response (hours) | Frequency of response | Total annual estimated burden (hours) |
|---|---|---|---|---|---|---|---|
| Review and Provide Copy of Full Interior Appraisal. | Third Party Disclosure. | Mandatory ..... | 1,300 | 13 | 0.13662 | On Occasion ... | 2,309 |
| Investigate and Verify Requirement for Second Appraisal. | Recordkeeping | Mandatory ..... | 1,300 | 8 | 0.13662 | On Occasion ... | 1,421 |
| Conduct and Provide Second Appraisal ..... | Third Party Disclosure. | Mandatory ..... | 1,300 | 1 | 0.13662 | On Occasion ... | 178 |
| Total Hourly Burden ..... | ..... | ..... | ..... | ..... | ..... | ..... | 3,908 |

*General Description of Collection:* Section 1471 of the Dodd-Frank Act established a new Truth in Lending section 129H, which contains appraisal requirements applicable to higher-risk mortgages and prohibits a creditor from extending credit in the form of a higher-risk mortgage loan to any consumer without meeting those requirements. A higher-risk mortgage is defined as a residential mortgage loan secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by certain enumerated percentage point spreads.

To implement this statutory requirement, a final rule was promulgated to amend 12 CFR part 1026, Regulation Z by the Bureau of Consumer Financial Protection, the Board of Governors of the Federal Reserve, the FDIC, the Federal Housing Finance Authority, the National Credit Union Association, and the Office of the Comptroller of the Currency.

In particular, the rule requires that, within three days of application, a creditor provide a disclosure that informs consumers regarding the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer. If a loan meets the definition of a higher-risk mortgage loan, then the creditor would be required to obtain a written appraisal prepared by a certified or licensed

appraiser who conducts a physical visit of the interior of the property that will secure the transaction, and send a copy of the written appraisal to the consumer. To qualify for the safe harbor provided under the rule, a creditor is required to review the written appraisal as specified in the text of the rule and appendix A. If a loan is classified as a higher-risk mortgage loan that will finance the acquisition of the property to be mortgaged, and the property was acquired within the previous 180 days by the seller at a price that was lower than the current sale price, then the creditor is required to obtain an additional appraisal. A creditor is required to provide the consumer a copy of the appraisal reports performed in connection with the loan, without charge, at least days prior to consummation of the loan.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

**Request for Comment**

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on July 11, 2019.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2019–15035 Filed 7–15–19; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

July 12, 2019.

**TIME AND DATE:** 10:00 a.m., Thursday, August 15, 2019.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument in the matter *The Doe Run Company,* Docket No. CENT 2015–318–RM. (Issues include whether the Judge erred in concluding that the operator had violated standards based on strict liability and in failing to conduct separate S&S and negligence analyses.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**PHONE NUMBER FOR LISTENING TO MEETING:** 1 (866) 867–4769, Passcode: 678–100.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2019–15231 Filed 7–12–19; 4:15 pm]

**BILLING CODE 6735–01–P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

July 12, 2019.

**TIME AND DATE:** 10:00 a.m., Friday, August 16, 2019.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *The Doe Run Company,* Docket No. CENT 2015–318–RM. (Issues include whether the Judge erred in concluding that the operator had violated standards based on strict liability and in failing to conduct separate S&S and negligence analyses.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**PHONE NUMBER FOR LISTENING TO MEETING:** 1 (866) 867–4769, Passcode: 678–100.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2019–15227 Filed 7–12–19; 4:15 pm]

**BILLING CODE 6735–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3381–PN]**

### Medicare Program; Application From The Joint Commission (TJC) for Initial CMS-Approval of Its Home Infusion Therapy (HIT) Accreditation Program

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

**ACTION:** Proposed notice with request for comment.

**SUMMARY:** This proposed notice acknowledges the receipt of an application from The Joint Commission (TJC) for initial recognition as a national accrediting organization providing home infusion therapy (HIT) services that wish to participate in the Medicare program. The statute requires that within 60 days of receipt of an organization's complete application, the Centers for Medicare & Medicaid Services (CMS) publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 15, 2019.

**ADDRESSES:** In commenting, please refer to file code CMS–3381–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3381–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3381–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

Christina Mister-Ward, (410) 786–2441
Shannon Freeland, (410) 786–4348
Lillian Williams, (410) 786–8636

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov* . Follow the search instructions on that website to view public comments.

## I. Background

Home infusion therapy (HIT) is a treatment option for Medicare beneficiaries, with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act added section 1861(iii) to the Social Security Act (the Act) establishing a new Medicare benefit for home infusion therapy services. Section 1861(iii)(1) of the Act defines ''home infusion therapy'' as the items and services described furnished by a qualified home infusion therapy supplier which are furnished in the individual's home. The individual must—

- Be under the care of an applicable provider; and
- Have a plan of care prescribing the type, amount, and duration of infusion therapy services that are to be furnished/established for him/her and periodically reviewed by a physician, in coordination with the furnishing of home infusion drugs under Part B.
- An ''applicable provider'' would mean a physician, a nurse practitioner, and a physician assistant.

Section 1861(iii)(3)(D)(III) of the Act, requires that a qualified home infusion therapy supplier be accredited by an AO designated by the Secretary in accordance with section 1834(u)(5) of the Act. Section 1834(u)(5)(A) of the Act identifies factors for designating AOs and in reviewing and modifying the list of designated AOs. These statutory factors are as follows:

- The ability of the organization to conduct timely reviews of accreditation applications.
- The ability of the organization take into account the capacities of suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).
- Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.
- Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit home infusion therapy suppliers furnishing home infusion therapy not later than January 1, 2021. Section 1861(iii)(3)(D) of the Act defines ''qualified home infusion therapy suppliers'' as being accredited by a CMS-approved AO.

On March 1, 2019, we published a solicitation notice entitled, ''Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Home Infusion Therapy Supplier Accreditation Program'' (84 FR 7057). This notice informed national accrediting organizations that accredit home infusion therapy suppliers of an opportunity to submit applications to participate in the home infusion therapy supplier accreditation program. Complete applications will be considered for the January 1, 2021 designation deadline if received by February 1, 2020.

Regulations for the approval and oversight of accrediting organizations for home infusion therapy organizations are located at 42 CFR part 488, subpart L. The requirements for home infusion therapy suppliers are located at 42 CFR part 486, subpart I.

## II. Approval of Accreditation Organizations

Section 1834(u)(5) of the Act and § 488.1010 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Our regulations at 42 CFR 488.1020(a) requires that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In accordance with § 488.1010(d), we have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of The Joint Commission's (TJC's) initial request for CMS approval of its HIT accreditation program. This notice also solicits public comment on whether TJC's requirements meet or exceed the Medicare conditions of participation for HIT services.

## III. Evaluation of Deeming Authority Request

TJC submitted all the necessary materials to enable us to make a determination concerning its request for initial approval of its HIT accreditation program. This application was determined to be complete on May 19, 2019. Under section 1834(u)(5) of the Act and § 488.1010 (Application and re-application procedures for national home infusion therapy accrediting organizations), our review and evaluation of TJC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of TJC's standards for HIT as compared with CMS' HIT conditions for certification.
- TJC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of TJC's to CMS standards and processes, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ TJC's processes and procedures for monitoring a HIT found out of compliance with TJC's program requirements.

++ TJC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ TJC's capacity to provide CMS with electronic data and reports necessary for effective assessment and interpretation of the organization's survey process.

++ The adequacy of TJC's staff and other resources, and its financial viability.

++ TJC's capacity to adequately fund required surveys.

++ TJC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

• TJC's agreement or policies for voluntary and involuntary termination of suppliers.

• TJC agreement or policies for voluntary and involuntary termination of the HIT AO program.

### IV. Collection of Information Requirements

This document does not impose information collection and 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. Chapter 35).

### V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

Dated: July 3, 2019.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2019–15127 Filed 7–15–19; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Proposed Information Collection Activity; The Early Head Start Family and Child Experiences Survey (Baby FACES 2020; OMB #0970–0354)

**AGENCY:** Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to collect descriptive information for the Early Head Start Family and Child Experiences Survey 2020 (Baby FACES 2020).

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

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov*. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* This information collection is to provide nationally representative data on Early Head Start (EHS) programs, centers, classrooms, staff, and families to guide program planning, technical assistance, and research. The proposed data collection builds upon a prior round of the study conducted in 2018 (Baby FACES 2018; OMB 0970–0354) that obtained information on EHS programs at a point in time to better understand how program processes support relationships (*e.g.,* between home visitors and parents, between parents and children, and between teachers and children) which are hypothesized to lead to improved child and family outcomes. Baby FACES 2020 has the same goals as Baby FACES 2018, but while the 2018 study focused on classroom-based relationships, the current study will take a closer look at home visiting processes. A new addition for this round is a measure of parent-child interaction which will allow exploration of hypothesized associations between home visitor-parent relationships and parent-child relationships. All other instruments are updates of those approved for the last round in 2018.

*Respondents:* Early Head Start program directors, child care center directors, teachers and home visitors, and parents of enrolled children.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|---|
| Classroom/home visitor sampling form (from EHS staff) | 407 | 204 | 1 | .17 | 35 |
| Child roster form (from EHS staff) | 252 | 126 | 1 | .33 | 42 |
| Parent consent form | 2,495 | 1,248 | 1 | .17 | 212 |
| Parent survey | 2,084 | 1,042 | 1 | .53 | 552 |
| Parent Child Report | 2,008 | 1,004 | 1 | .33 | 331 |
| Staff survey (Teacher survey and Home visitor survey) | 1,317 | 659 | 1 | .50 | 330 |
| Staff Child Report | 1,046 | 523 | 2.13 | .25 | 279 |
| Program director survey | 120 | 60 | 1 | .50 | 30 |
| Center director survey | 294 | 147 | 1 | .50 | 74 |
| Parent child interaction | 996 | 498 | 1 | .17 | 85 |

*Estimated Total Annual Burden Hours:* 1,970.

**Authorities:** Sec. 640(a)(2)(D) and Sec. 649 of the Improving Head Start for School Readiness Act.

Sec. 645A and 649 of the Improving Head Start for School Readiness Act of 2007 and the Consolidated Appropriations Act of 2017.

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2019–15080 Filed 7–15–19; 8:45 am]

**BILLING CODE 4184–22–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Behavioral Interventions To Advance Self-Sufficiency Next Generation (BIAS–NG) (0970–0502)

**AGENCY:** Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Office of Planning, Research, and Evaluation (OPRE) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) requests Office of Management and Budget (OMB) approval to modify the previously approved pilot generic clearance (0970–0502) to collect data as part of rapid cycle testing and evaluation, in order to inform the design of interventions informed by behavioral science and to better understand the mechanisms and effects of such interventions. Interventions have been and will continue to be developed in the program area domains of Temporary Assistance for Needy Families (TANF) and child welfare, and this revision would also allow for collection of data in the Early Head Start/Head Start program area. These interventions are intended to improve outcomes for participants in these programs.

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

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Correction*

This is a republication of **Federal Register** 2019–13701; 84 FR 30718 to ensure the correct materials are available for public comment on *RegInfo.gov.*

*Description:* OPRE is conducting the Behavioral Interventions to Advance Self-Sufficiency Next Generation (BIAS–NG) project. This project uses behavioral insights to design and test interventions intended to improve the efficiency, operations, and efficacy of human services programs. The BIAS–NG project is applying and testing behavioral insights to ACF programs including TANF and Child Welfare, and intends to expand these efforts to Early Head Start/Head Start. This notice is a revision to a previously approved collection, which included data collection to design and test interventions in the TANF and Child Welfare domains. Under the approved pilot generic clearance, OPRE plans to work with approximately six sites, and will conduct one or more tests per site, for a total of approximately 9 tests of behavioral interventions. At least one of these sites will be in the newly added program area of Head Start/Early Head Start. The design and testing of BIAS-NG interventions is rapid and, to the extent possible, iterative. Each specific intervention is designed in consultation with agency leaders and launched as quickly as possible. To maximize the likelihood that the intervention produces measurable, significant, positive effects on outcomes of interest, rapid cycle evaluation techniques will be employed in which proximate outcomes will be measured to allow the research team to more quickly iterate and adjust the intervention design, informing subsequent tests. Due to the rapid and iterative nature of this work, OPRE sought and received generic clearance to conduct this research. Following standard OMB requirements for generic clearances, once instruments requiring burden are tailored to a specific site and the site's intervention, OPRE submits an individual generic information collection request under this umbrella clearance. Each request includes the individual instrument(s), a justification specific to the individual information collection, a description of the proposed intervention, and any supplementary documents. Each specific information collection includes up to two submissions: One submission for the formative stage research and another submission for any further data collection requiring burden during the testing phase. The type of information to be collected and the uses of the information is described in the supporting statements, found here: *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201707-0970-005.*

This Notice is specific to expanding the program area domains to include Early Head Start/Head Start, in addition to the previously approved domains of Child Welfare and TANF.

*Respondents:* (1) Program Administrators, (2) Program Staff and (3) Program Clients.

TOTAL BURDEN ESTIMATES

[TANF, CW, Third Domain]

| Instrument | Previously approved respondents for TANF & CW | Total number of respondents (TANF, CW, EHS/HS) | Number of responses per respondent | Average burden hours per response | Total burden hours with 3rd domain |
|---|---|---|---|---|---|
| **Diagnosis and Design** | | | | | |
| Administrator interviews/focus groups | 24 | 48 | 1 | 1 | 48 |
| Staff interviews/focus groups | 48 | 378 | 1 | 1 | 378 |

TOTAL BURDEN ESTIMATES—Continued

[TANF, CW, Third Domain]

| Instrument | Previously approved respondents for TANF & CW | Total number of respondents (TANF, CW, EHS/HS) | Number of responses per respondent | Average burden hours per response | Total burden hours with 3rd domain |
|---|---|---|---|---|---|
| Client interviews/focus groups | 48 | 348 | 1 | 1 | 348 |
| Client survey | 600 | 840 | 1 | .25 | 210 |
| Staff Survey | 120 | 144 | 1 | .25 | 36 |
| **Evaluation** | | | | | |
| Administrator interviews/focus groups | 48 | 96 | 1 | 1 | 96 |
| Staff interviews/focus groups | 96 | 756 | 1 | 1 | 756 |
| Client interviews/focus groups | 96 | 696 | 1 | 1 | 696 |
| Client survey | 6,000 | 10,800 | 1 | .25 | 2,700 |
| Staff Survey | 120 | 600 | 1 | .25 | 150 |

*Estimated Total Burden Hours:* 5,418.

**Authority:** 42 U.S.C. 1310.

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2019–15082 Filed 7–15–19; 8:45 am]

**BILLING CODE 4184–07–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; State Temporary Assistance for Needy Families Case Studies (New Collection)

**AGENCY:** Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Office of Planning, Research, and Evaluation (OPRE) is proposing a data collection activity as part of the State Temporary Assistance for Needy Families (TANF) Case Studies project. This study seeks to document innovative employment and training programs for low-income individuals including TANF recipients and examine the ways the programs provide or link families to wraparound services. Over a three-year period, the study will conduct up to 12 comprehensive qualitative case studies and up to 20 profiles of innovative programs to showcase promising approaches.

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

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*. Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov*. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The State TANF Case Studies project will involve several phases including: (1) Identifying innovative programs through a scan of the field and engagement with stakeholders; (2) visiting up to 12 selected programs to collect detailed information and produce comprehensive case studies of these programs to enhance policymakers' and other stakeholders' understanding of promising programs helping low-income individuals to succeed in the labor force; and (3) gathering information through telephone interviews to produce up to 20 shorter case studies. The proposed information collection activities are: (1) Semi-structured interviews with program and partner administrators and frontline staff; (2) in-depth interviews with participants to better inform and enhance understanding of client experiences and perspectives; (3) a guided case review with frontline staff to capture information about client characteristics as well as intensity, frequency, duration, and sequencing of services; and (4) an observation of program services, such as case management sessions, intakes and referrals, services delivered in a classroom setting, and work sites. The study will take place over a three year period.

*Respondents:* Respondents include program administrators, frontline program staff, and program participants. Program administrators include staff who administer and supervise the case study program under review, TANF and employment and training programs; child care and other wraparound supports; and other workforce programs and partners such as community colleges, adult basic education providers, and employers; and state decision makers, as appropriate. Frontline program staff include intake workers, case managers, job developers, and other direct service providers who work at TANF agencies and American Job Centers, employment and training providers such as community colleges, and providers of wraparound supports, such as child care subsidy frontline staff. TANF and other low-income program participants will also be respondents. All participants will be able to opt out of participating in the data collection activities.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|---|
| Semi-structured program staff interview guide | 200 | 67 | 1 | 1 | 67 |
| In-depth participant interview guide | 24 | 8 | 1 | 1.5 | 12 |
| Case review guide | 24 | 8 | 2 | .75 | 12 |

*Estimated Total Annual Burden Hours:* 91.

**Authority:** Sec. 413, Pub. L. 115–31.

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2019–15092 Filed 7–15–19; 8:45 am]

**BILLING CODE 4184–09–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–1006]**

### Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the Electronic Common Technical Document Specifications (Revision 7); Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7).'' FDA has identified certain submission types that FDA believes warrant an exemption (Type III drug master files (DMFs)) or a long-term waiver (certain positron emission tomography (PET) drug products and certain Type II DMFs supporting PET drugs or noncommercial submissions or applications) from the requirement to submit to the Agency in eCTD format. In addition, this guidance outlines certain circumstances where FDA may determine that a short-term waiver from electronic common technical document (eCTD) submission requirements could be granted. This guidance is a revision of the final guidance issued on January 29, 2019, and when finalized, will supersede that guidance.

**DATES:** Submit either electronic or written comments on the draft guidance by September 16, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2014–N–1006 for ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts

and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Ebla Ali Ibrahim, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6302, Silver Spring, MD 20993–0002, 301–796–3691; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7).'' This guidance provides information regarding submission types that FDA believes warrant an exemption or long-term waiver from Agency eCTD requirements. In addition, this guidance outlines certain circumstances where FDA proposes granting short-term waivers from eCTD submission requirements. This revised draft guidance is intended to address current concerns raised to FDA regarding the burden of complying with eCTD submission requirements, which could have unintended public health consequences.

In the **Federal Register** of January 3, 2013 (78 FR 310), FDA announced the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications.'' The draft guidance was announced in accordance with the Food and Drug Administration Safety and Innovation Act, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to require that certain submissions under the FD&C Act and Public Health Service Act be submitted in electronic format, beginning no earlier than 2 years after publication of the final version of the draft guidance. That draft guidance described how FDA planned to implement the requirements for the electronic submission of applications for certain human pharmaceutical products. In the **Federal Register** of July 25, 2014 (79 FR 43494), FDA announced the availability of a revised draft guidance for industry of the same title, which contained changes from the previous 2013 draft guidance on eCTD requirements. The final guidance (Revision 3) posted on May 5, 2015, provided a timetable of 24 months after issuance of the final guidance for the initial implementation of the electronic submission requirement for new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologic license applications (BLAs), and master files (May 5, 2017), and 36 months for commercial investigational new drug applications (INDs) (May 5, 2018). In April 2017, the revised guidance updated the timetable for compliance for required master file submissions in eCTD from 24 months to 36 months. In April 2018, the guidance was revised to include an extension for the timetable for Type III DMF submissions in eCTD for an additional 12 months. FDA determined that many of the concerns outlined in the guidance remain, and Revision 6 of the guidance was published to extend Type III DMF submissions in eCTD until May 5, 2020. Revision 6 of the guidance remains in effect until this draft revised version of the guidance is finalized.

*Type III DMFs.* Type III DMFs are submitted to the Agency to provide information regarding packaging or packaging materials in support of NDAs, ANDAs, or BLAs. These DMFs are commonly submitted by firms that are not pharmaceutical manufacturers, but instead are material suppliers and manufacturers of packaging and packaging materials. Such firms are several steps removed from the NDA, ANDA, or BLA applicant in the supply chain. As described further below, compliance with eCTD submission requirements can represent a significant burden to support use of their packaging products for pharmaceuticals when balanced against their business interest in supplying their products for this use. In many cases, pharmaceutical packaging material is a limited portion of their overall business. In addition, the need to continue to maintain a Type III DMF to support a drug marketing application may occur even when the firm's packaging material or product is no longer actively marketed. There is a possibility that this regulatory burden could result in firms ending their supply of these critical materials to the pharmaceutical industry, which could lead to drug supply interruptions and drug shortages. Finally, only a small portion of Type III DMFs submitted to the Agency require review by FDA staff in support of a marketing application; in most cases, the information needed to support approval is already present in the marketing application. The burden on the Agency of allowing non-eCTD submissions for Type III DMFs is expected to be reasonably low. FDA reviewed the concerns expressed by the suppliers and manufacturers and proposes to exempt Type III DMFs from compliance with the eCTD submission requirement (as opposed to maintaining a compliance deadline of May 5, 2020). FDA continues to recommend use of the eCTD format for Type III DMF submissions where possible, but the Agency is issuing this revision to its guidance to propose this exemption.

*PET drug products.* PET is a medical imaging method that produces a computerized image (scan) using a class of positron-emitting drugs, a unique type of radiopharmaceuticals. A PET drug or biologic is a radioactive agent that exhibits spontaneous disintegration of unstable nuclei by the emission of positrons and is used for providing dual photon positron emission tomographic diagnostic images (21 CFR 212.1, 21 CFR 601.31(a)). PET is used in evaluating patients with coronary artery disease and in certain neurologic disorders. PET drugs are distinct among radiopharmaceuticals because of their unique production methods, and many are characterized by their short half-lives (some as short as 20 minutes). Many PET drug production facilities are therefore close in proximity to the patients to whom the drugs are administered.

FDA's proposal to grant waivers from eCTD requirements for certain PET drugs is consistent with FDA's and Congress's history of recognizing that PET drugs can pose unique considerations. For example, in 1997, Congress passed the Food and Drug Administration Modernization Act (FDAMA) (Pub. L. 105–115), which directed FDA to regulate PET drugs

(section 121(c)) by developing appropriate procedures for the approval of PET drugs in accordance with section 505 of the FD&C Act (21 U.S.C. 355) and to establish current good manufacturing practice requirements for PET drugs. Within FDAMA, Congress recognized the unique characteristics of PET drugs—in particular, the special criteria and processes required to produce these drugs—directing the Secretary of Health and Human Services to take due account of any relevant differences between not-for profit institutions that compound the drugs for their patients and commercial manufacturers of the drugs. See section 121(c)(1)(B) of FDAMA.

Statements like this indicate that one of Congress' goals in enacting section 121 of FDAMA was to promote the availability of FDA-approved PET drug products for the patients who need them. Previously, FDA found that, because of the unique circumstances surrounding the regulation of PET drug products, assessment of an application fee on certain PET drugs would present a significant barrier to innovation, and FDA granted a waiver of application fees for certain PET drug products.[1] Similarly, FDA believes that the requirement to submit applications in eCTD format could result in a significant burden on certain PET drug producers and may lead to reduced availability of these innovative and lifesaving diagnostic drugs. This guidance proposes that sponsors and applicants of PET drug products may request a waiver from complying with eCTD submission requirements if they meet certain factors set forth in the revised eCTD guidance. Although FDA proposes waiving eCTD requirements for these submissions, FDA continues to recommend use of the eCTD format for PET drug products if feasible. The Agency is issuing this revision to its guidance to propose this waiver.

*Certain Type II DMFs.* Type II DMFs are submitted to the Agency to make quality information available for Agency evaluation of the quality of active pharmaceutical ingredients and drug products used in investigational studies. Many such studies are conducted by academic, non-commercial sponsors where there is no commercial objective to support these applications. In some cases, the Type II DMF submission may be submitted by the academic sponsor or by a second party. For these academic IND sponsors, compliance with eCTD submission requirements can represent a significant burden and may present an obstacle to the conduct of research. After consideration of this regulatory burden and the potential negative impact on research and innovation, FDA proposes to waive the requirement to comply with eCTD submission requirements for certain Type II DMF submissions from an academic institution, government (State or Federal), or a non-profit research organization that are solely supporting a noncommercial application.

*Short-Term Waivers.* This guidance also describes the circumstances in which FDA proposes granting a temporary waiver from complying with eCTD submission requirements and the procedures for submitting requests for waivers.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7).''

FDA guidances ordinarily contain standard language explaining that guidances should be viewed only as recommendations unless specific regulatory or statutory requirements are cited. FDA is not including this standard language in this guidance because this guidance contains binding provisions. In section 745A(a) of the FD&C Act (21 U.S.C. 379k–1), Congress granted explicit authorization to FDA to specify in guidance the format for the electronic submissions required under that section and required that FDA ''shall'' issue such guidance. Accordingly, this guidance explains such requirements under section 745A(a) of the FD&C Act, indicated by the use of the words *must* or *required,* and therefore is not subject to the usual restrictions in FDA's good guidance practice regulations, such as the requirement that guidances not establish legally enforceable responsibilities. See *e.g.,* 21 CFR 10.115(d).

## II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312, 314, and 601 have been approved under OMB control numbers 0910–0014, 0910–0001, 0910–0338, and 0910–0308.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *https://www.regulations.gov*.

Dated: July 10, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15103 Filed 7–15–19; 8:45 am]

**BILLING CODE 4164–01–P**

[1] *https://www.federalregister.gov/documents/2000/03/10/00-5865/positron-emission-tomography-drug-products-safety-and-effectiveness-of-certain-pet-drugs-for.*

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–P–0372]**

### Determination That MIOCHOL (Acetylcholine Chloride Intraocular Solution), 20 Milligrams/Vial, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) has determined that MIOCHOL (acetylcholine chloride intraocular solution), 20 milligrams (mg)/vial, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for acetylcholine chloride intraocular solution, 20 mg/vial, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Meadow Platt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6224, Silver Spring, MD 20993–0002, 301–796–1830.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants

do not have to repeat the clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

MIOCHOL (acetylcholine chloride intraocular solution), 20 mg/vial, is the subject of NDA 016211, held by Novartis Pharmaceutical Corporation (Novartis). MIOCHOL is indicated to obtain complete miosis of the iris in seconds after delivery of the lens in cataract surgery, in penetrating keratoplasty, iridectomy, and other anterior segment surgery where rapid, complete miosis may be required.

In a letter dated January 18, 2006, Novartis requested withdrawal of NDA 016211 for MIOCHOL (acetylcholine chloride intraocular solution). In the **Federal Register** of July 12, 2018 (83 FR 32305), FDA announced that it was withdrawing approval of NDA 016211, effective August 13, 2018.

Hyman, Phelps & McNamara, P.C., submitted a citizen petition dated January 23, 2019, under 21 CFR 10.30, requesting that the Agency determine whether MIOCHOL (acetylcholine chloride intraocular solution), 20 mg/vial, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that MIOCHOL (acetylcholine chloride intraocular solution), 20 mg/vial, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that MIOCHOL (acetylcholine chloride intraocular solution), 20 mg/vial, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of MIOCHOL (acetylcholine chloride intraocular solution), 20 mg/vial, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list MIOCHOL (acetylcholine chloride intraocular solution), 20 mg/vial, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to MIOCHOL (acetylcholine chloride intraocular solution), 20 mg/vial, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 9, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15089 Filed 7–15–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0117]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the FDA ''Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims,'' which is intended to assist applicants in developing labeling for outcome claims for drugs that are indicated to treat hypertension.

**DATES:** Submit either electronic or written comments on the collection of information by September 16, 2019.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 16, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2010–N–0117 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

## Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims

*OMB Control Number 0910–0670—Extension*

This information collection request supports recommendations found in Agency guidance. The document entitled, ''Guidance for Industry; Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims,'' available from our website at *https://www.fda.gov/media/71824/download,* encourages the submission of supplemental labeling and is intended to assist applicants in developing labeling for outcome claims for drugs that are indicated to treat hypertension, and to provide common labeling for antihypertensive drugs except where differences are clearly supported by clinical data.

With few exceptions, current labeling for antihypertensive drugs includes only the information that these drugs are indicated to reduce blood pressure; the labeling does not include information on the clinical benefits related to cardiovascular outcomes expected from such blood pressure reduction. However, blood pressure control is well established as beneficial in preventing serious cardiovascular events, and inadequate treatment of hypertension is acknowledged as a significant public health problem. We believe that the appropriate use of these drugs can be encouraged by making the connection between lower blood pressure and improved cardiovascular outcomes more explicit in labeling.

As discussed in the guidance, we therefore recommend the following information collection:

1. Section IV.C of the guidance requests that the CLINICAL STUDIES section of the Full Prescribing Information of the labeling should include a summary of placebo or active-controlled trials showing evidence of the specific drug's effectiveness in lowering blood pressure. If trials demonstrating cardiovascular outcome benefits exist, those trials also should be summarized in this section. Table 1 in section V of the guidance contains the specific drugs for which FDA has concluded that such trials exist. If there are no cardiovascular outcome data to cite, one of the following two paragraphs should appear:

• ''There are no trials of [DRUGNAME] or members of the [name of pharmacologic class] pharmacologic class demonstrating reductions in cardiovascular risk in patients with hypertension,'' or

• ''There are no trials of [DRUGNAME] demonstrating reductions in cardiovascular risk in patients with hypertension, but at least one pharmacologically similar drug has demonstrated such benefits.''

In the latter case, the applicant's submission generally should refer to table 1 in section V of the guidance. If the applicant believes that table 1 is incomplete, it should submit the clinical evidence for the additional

information to Docket No. FDA–2008–D–0150. The labeling submission should reference the submission to the docket. We estimate that no more than one submission to the docket will be made annually from one company, and that each submission will take approximately 10 hours to prepare and submit. Recommendations for the CLINICAL STUDIES section of the Full Prescribing Information of the labeling are covered by FDA regulations at §§ 201.56 and 201.57 (21 CFR 201.56 and 201.57) and require such labeling. The information collection associated with these regulations is approved under OMB control number 0910–0572.

2. Section VI.B of the guidance requests that the format of the cardiovascular outcome claim submitted to FDA in a prior approval supplement include the following information:

- A statement that the submission is a cardiovascular outcome claim supplement, with reference to the guidance and related Docket No. FDA–2008–D–0150
- Applicable FDA forms (*e.g.,* 356h, 3397)
- Detailed table of contents
- Revised labeling to include:
  - Draft revised labeling conforming to the requirements in §§ 201.56 and 201.57, and
  - Marked-up copy of the latest approved labeling, showing all additions and deletions, with annotations of where supporting data (if applicable) are located in the submission.

We estimate that on average, 4 cardiovascular outcome claim supplements will be submitted annually from 4 different companies, and that each supplement will take approximately 20 hours to prepare and submit. The guidance also recommends that other labeling changes (*e.g.,* the addition of adverse event data) should be minimized and provided in separate supplements, and that the revision of labeling to conform to §§ 201.56 and 201.57 may require substantial revision to the ADVERSE REACTIONS or other labeling sections.

3. Section VI.C of the guidance states that applicants are encouraged to include the following statement in the drug's promotional materials:

- ''[DRUGNAME] reduces blood pressure, which reduces the risk of fatal and nonfatal cardiovascular events, primarily strokes and myocardial infarctions. Controlling high blood pressure should be part of comprehensive cardiovascular risk management, including, as appropriate, lipid control, diabetes management, antithrombotic therapy, smoking cessation, exercise, and limited sodium intake. Many patients will require more than one drug to achieve blood pressure goals.''

The inclusion of this statement in the promotional materials for the drug is exempt from OMB review under 5 CFR 1320.3(c)(2).

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Submission to Docket No. FDA–2008–D–0150 | 1 | 1 | 1 | 10 | 10 |
| Cardiovascular Outcome Claim Supplement Submission | 4 | 1 | 4 | 20 | 80 |
| Total | | | | | 90 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimate for the information collection reflects an overall increase of burden. This increase corresponds to an increase in submissions we have received over the last few years.

Dated: July 9, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–15101 Filed 7–15–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

**[OMB No. 0915–0334—Extension]**

### Agency Information Collection Activities: Proposed Collection: Comment Request; Information Collection Request Title: Countermeasures Injury Compensation Program

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than September 16, 2019.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title, below, for reference.

*Information Collection Request Title:* Countermeasures Injury Compensation Program, OMB No. 0915–0334—Extension.

*Abstract:* This is a request for continued OMB approval of the

information collection requirements for the Countermeasures Injury Compensation Program (CICP or Program). The CICP, within the Division of Injury Compensation Programs, Healthcare Systems Bureau, HRSA, administers this compensation program as specified by the Public Readiness and Emergency Preparedness Act of 2005 (PREP Act).

The Secretary of the Department of HHS (Secretary) can issue a PREP Act declaration. When issued, the purpose of a declaration is to identify a disease, health condition, or a threat to health that is currently, or may in the future constitute, a public health emergency. The Secretary's declaration may recommend and encourage the development, manufacturing, distribution, dispensing, and administration or use of one or more covered countermeasures (*e.g.,* anthrax vaccine) to treat, prevent, or diagnose the disease, condition, or threat specified in the declaration.

*Need and Proposed Use of the Information:* The CICP provides compensation to eligible individuals who suffer serious injuries directly caused by a covered countermeasure administered or used pursuant to a PREP Act Declaration or to their estates and/or to certain survivors.

To determine whether a requester is eligible for Program benefits (compensation) for a countermeasure injury, the CICP staff must review the Request for Benefits Package (RFB) that includes the following:

(1) *Request for Benefits Form and Supporting Documentation:* The Request for Benefits Form and supporting documentation initiates the CICP claims review process. They also serve as the CICP's mechanism for gathering required information about the requester, documenting the use or administration of a countermeasure, and obtaining medical information about the countermeasure recipient.

(2) *Authorization for Use or Disclosure of Health Information Form (Authorization Form):* The requestor completes the Authorization Form and gives medical providers permission to disclose the countermeasure recipient's health information via medical records to the CICP for determining eligibility for CICP benefits.

(3) *Additional Documentation and Certification:* During the eligibility review, the CICP provides requesters with the opportunity to supplement their RFB with additional medical records and supporting documentation before the Program makes a final decision. The CICP asks requesters to complete and sign a form indicating whether they intend to submit additional documentation prior to the final determination of their case. After the CICP makes a final decision on a case, there are no other opportunities for a requester to submit additional medical records or supporting documents.

(4) *Benefits Package and Supporting Documentation:* A requester who is an injured countermeasure recipient may be eligible to receive benefits for unreimbursed medical expenses and/or lost employment income. The estate of a deceased countermeasure recipient may also be eligible to receive payment for unreimbursed medical expenses and/or lost employment income accrued prior to the injured countermeasure recipient's death. These documents ask the requester to submit documentation of the countermeasure recipient's unreimbursed medical expenses and lost employment income. If death was the result of the administration or use of the countermeasure, certain survivor(s) of eligible deceased countermeasure recipients may be eligible to receive a death benefit, but not unreimbursed medical expenses or lost employment income benefits (42 CFR 110.33). These documents request additional information, such as a marriage license, from the requester to prove that they are a survivor of the deceased countermeasure recipient.

The RFB that the CICP sends to requesters who may be eligible for compensation includes certification forms and instructions outlining the supporting documentation needed to determine the types and amounts of benefits. This documentation is required under 42 CFR 110.60–110.63 of the CICP's implementing regulation to enable the Program to determine the types and amounts of benefits the requester may be eligible to receive.

*Likely Respondents:* Countermeasure recipients are the most likely respondents to this **Federal Register** notice regarding the CICP information collection request because the CICP reviews, and if eligible compensates, countermeasure recipient injury claims.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUAL BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Request for Benefits Form and Supporting Documentation | 100 | 1 | 100 | 11.00 | 1,100.00 |
| Authorization for Use or Disclosure of Health Information Form | 100 | 1 | 100 | 2.00 | 200.00 |
| Additional Documentation and Certification | 30 | 1 | 30 | .75 | 22.50 |
| Benefits Package and Supporting Documentation | 30 | 1 | 30 | .13 | 3.75 |
| Total | 260 | | 260 | | 1,326.25 |

**Maria G. Button,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2019–15007 Filed 7–15–19; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[OMHA–1902–N]**

## Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—April Through June 2019

**AGENCY:** Office of Medicare Hearings and Appeals (OMHA), HHS.

**ACTION:** Notice.

**SUMMARY:** This quarterly notice lists the OMHA Case Processing Manual (OCPM) instructions that were published from April through June 2019. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

**FOR FURTHER INFORMATION CONTACT:** Jason Green, by telephone at (571) 777–2723, or by email at *jason.green@hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary within the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage organizations (MAOs), Medicaid State agencies, and applicable plans, have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D plan sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization determination, coverage determination, and at-risk determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an Independent Review Entity (IRE) for Part C organization determination appeals, or by PDPSs and an IRE for Part D coverage determination and at-risk determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges and attorney adjudicators. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council (Council). In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. To help ensure nationwide consistency in that effort, OMHA established a manual, the OCPM. Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations and at-risk determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that the Secretary publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every three months in the **Federal Register**.

### II. Format for the Quarterly Issuance Notices

This quarterly notice provides the specific updates to the OCPM that have occurred in the three-month period of April through June 2019. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website provides more timely access to the current OCPM chapters for those involved in the Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive notification of certain updates to the OMHA website, including when new or revised OCPM chapters are posted. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

### III. How To Use the Notice

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. The OCPM can be accessed at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

### IV. OCPM Releases for April Through June 2019

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of OCPM provisions that were issued or revised in the three-month period of April through June 2019. This information is available on our website at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

*OCPM Chapter 11: Procedural Review and Determinations*

This newly issued chapter describes how to conduct a procedural review of an appeal, and how to resolve any identified procedural defects. The procedural review is required to ensure that a request for hearing or review of dismissal meets jurisdictional and filing

requirements, and that procedural determinations are made before case development occurs, or a conference or hearing is scheduled. If there is a procedural defect, the defect may result in a dismissal or may require an opportunity for the appellant to resolve the defect. If an adjudication time frame applies to the case, a procedural defect may delay the start of, or extend, the adjudication time frame. When the procedural review is complete, and any identified defects have been resolved, and any applicable determinations have been made, the case moves forward in the adjudication process. Specialized procedural review is required for requests for expedited hearings in Part D appeals; however, a hearing may be scheduled before the screening is complete and any procedural defects are resolved, to facilitate meeting the expedited adjudication period.

*OCPM Chapter 6: CMS, CMS Contractor, Plan Roles—Sections 6.3.1.1, 6.3.2*

This chapter was initially released on July 27, 2018, and was included in a quarterly notice published in the November 14, 2018 **Federal Register** (83 FR 56859). Sections 6.3.1.1 and 6.3.2 of this chapter state that a Unified Program Integrity Contractor (UPIC) cannot elect party status in an appeal, and may only participate as a non-party. As initially published, these sections cited to CMS's Medicare Program Integrity Manual, internet-only manual publication 100–08, chapter 4, section 4.8.2, which previously stated that a Zone Program Integrity Contractor (ZPIC) could not elect party status in an appeal, and section 4.1, which stated that all references to ZPICs shall also apply to UPICs, unless otherwise specified in the UPIC Statement of Work (SOW). Effective October 22, 2018, CMS revised the Medicare Program Integrity Manual to directly state that a UPIC cannot invoke party status, and can only participate in OMHA proceedings as a non-party. This revision to OCPM 6.3.1.1 and 6.3.2 updates footnotes in these sections to reflect the CMS manual's revised language. This revision does not change the way that OMHA interprets or implements the underlying policy that a UPIC cannot elect party status.

Dated: July 2, 2019.

**Karen W. Ames,**

*Executive Director, Office of Medicare Hearings and Appeals.*

[FR Doc. 2019–15151 Filed 7–15–19; 8:45 am]

**BILLING CODE 4150–46–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice To Announce Request for Information on the Development of the National Institute of Dental and Craniofacial Research's Strategic Plan for Fiscal Years 2020–2025

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Dental and Craniofacial Research (NIDCR) is drafting its Strategic Plan for Fiscal Years (FY) 2020–2025 to help guide the research it supports over the next six years. NIDCR 2030 established five priority areas and accompanying goals, which we're now using to organize the 2020–2025 Strategic Plan. Through this Request for Information, NIDCR invites researchers in academia and industry, health care professionals, patient advocates and health advocacy organizations, scientific or professional organizations, Federal agencies, and other interested members of the public to provide feedback on NIDCR's next strategic plan.

**DATES:** The NIDCR's Request for Information is open for public comment for a period of 30 days. Comments must be received by August 15, 2019, to ensure consideration. After the public comment period has closed, the comments received by the NIDCR will be considered in a timely manner for the development of the FY 2020–2025 National Institute of Dental and Craniofacial Research's Strategic Plan.

**ADDRESSES:** Please visit our website to view the priority areas and provide your feedback electronically: *https://www.nidcr.nih.gov/about-us/strategic-plan/2020-2025-nidcr-strategic-plan.* Feedback can also be submitted via email (*NIDCRstrategicPlan@nidcr.nih.gov*).

**FOR FURTHER INFORMATION CONTACT:** D. Jonathan Horsford, Ph.D. Acting Director, Office of Science Policy and Analysis, National Institute of Dental and Craniofacial Research, NIH, 31 Center Drive, Suite 5B55, Bethesda, MD 20892. Email: *Jonathan.Horsford@NIH.gov.*

**SUPPLEMENTARY INFORMATION:** The National Institute of Dental and Craniofacial Research's (NIDCR) mission is to improve the health of the nation through investments in research focused on dental, oral, and craniofacial (DOC) diseases including caries, periodontal disease, cancers, orofacial pain, craniofacial disorders, salivary gland disorders, rare diseases, and oral manifestations of systemic diseases. In 2017, NIDCR launched NIDCR 2030, a visioning initiative where we imagined a future world in which DOC health and diseases are understood in the context of the whole body and research transforms how we promote health, treat disease, and overcome health disparities. To get us there, NIDCR requests your help in developing our 2020–2025 Strategic Plan.

Dated: July 9, 2019.

**Martha J. Somerman,**

*Director, National Institute of Dental and Craniofacial Research, National Institutes of Health.*

[FR Doc. 2019–15006 Filed 7–15–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2019–0258]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0048

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change, of the following collection of information: 1625–0048, Vessel Reporting Requirements. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before August 15, 2019.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2019–0258] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2019–0258], and must be received by August 15, 2019.

**Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0048.

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (84 FR 19096, May 3, 2019) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collections.

**Information Collection Request**

*Title:* Vessel Reporting Requirements.

*OMB Control Number:* 1625–0048.

*Summary:* Owners, Charterers, Managing Operators, or Agents of U.S. vessels must immediately notify the Coast Guard if they believe the vessel may be lost or in danger. The Coast Guard uses this information to investigate the situation and, when necessary, plan appropriate search and rescue operations.

*Need:* Section 2306(a) of 46 U.S.C. requires the owner, charterer, managing operator, or an agent of vessel of the United States to immediately notify the Coast Guard if: (1) There is reason to believe that the vessel may have been lost or imperiled, or (2) more than 48 hours have passed since last receiving communication from the vessel. These reports must be followed by written confirmation submitted to the Coast Guard within 24 hours. The implementing regulations are contained in 46 CFR part 4.

*Forms:* None.

*Respondents:* Businesses or other for profit organizations.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 137 hours to 138 hours a year, due to an adjustment in the agencies estimate. The change in annual burden is an ADJUSTMENT (*i.e.,* increase) due to a mathematical error in the agencies estimate in the previous submission. There is no proposed change to the reporting requirements of this collection. The reporting requirements and methodology for calculating burden, remains unchanged.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 11, 2019.

**James D. Roppel,**

*Chief, Office of Information Management, U.S. Coast Guard.*

[FR Doc. 2019–15051 Filed 7–15–19; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

**[Docket No. DHS–2019–0035]**

### DHS Data Privacy and Integrity Advisory Committee

**AGENCY:** Department of Homeland Security Privacy Office.

**ACTION:** Committee management; request for applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

**SUMMARY:** The Department of Homeland Security Privacy Office seeks applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

**DATES:** Applications for membership must reach the Department of Homeland Security Privacy Office at the address below on or before August 15, 2019.

**ADDRESSES:** If you wish to apply for membership, please submit the documents described below to Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory

Committee, by *either* of the following methods:

- *Email: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2019–0035) in the subject line of the message.
- *Fax:* (202) 343–4010.

**FOR FURTHER INFORMATION CONTACT:** Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The DHS Data Privacy and Integrity Advisory Committee is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451 and provides advice at the request of the Secretary and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information (PII), as well as data integrity and other privacy-related matters. The duties of the Committee are solely advisory in nature. In developing its advice and recommendations, the Committee may, consistent with the requirements of the FACA, conduct studies, inquiries, or briefings in consultation with individuals and groups in the private sector and/or other governmental entities. The Committee typically hosts two public meetings per calendar year.

*Committee Membership:* The DHS Privacy Office is seeking applicants for terms of three years from the date of appointment. Members are appointed by and serve at the pleasure of the Secretary of the Department of Homeland Security, and must be specially qualified to serve on the Committee by virtue of their education, training, and experience in the fields of data protection, privacy, cybersecurity, and/or emerging technologies. Members are expected to actively participate in Committee and Subcommittee activities and to provide material input into Committee research and recommendations. Pursuant to the FACA, the Committee's Charter requires that Committee membership be balanced to include:

1. Individuals who are currently working in higher education, state or local government, or not-for-profit organizations;

2. Individuals currently working in for-profit organizations including at least one who shall be familiar with the data privacy-related issues addressed by small- to medium-sized enterprises; and

3. Other individuals, as determined appropriate by the Secretary.

Committee members serve as Special Government Employees (SGE) as defined in section 202(a) of title 18 U.S.C. As such, they are subject to Federal conflict of interest laws and government-wide standards of conduct regulations. Members must annually file a New Entrant Confidential Financial Disclosure Reports (OGE Form 450) for review and approval by Department ethics officials. DHS may not release these reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the *Privacy Act* (5 U.S.C. 552a). Committee members are also required to obtain and retain at least a secret-level security clearance as a condition of their appointment. Members are not compensated for their service on the Committee; however, while attending meetings or otherwise engaged in Committee business, members may receive travel expenses and per diem in accordance with Federal regulations.

*Committee History and Activities:* All individuals interested in applying for Committee membership should review the history of the Committee's work. The Committee's charter and current membership, transcripts of Committee meetings, and all of the Committee's reports and recommendations to the Department are posted on the Committee's web page on the DHS Privacy Office website (*www.dhs.gov/privacy*).

*Applying For Membership:* If you are interested in applying for membership to the DHS Data Privacy and Integrity Advisory Committee, please submit the following documents to Sandra Taylor, Designated Federal Officer, at the address provided below within 30 days of the date of this notice:

1. A current resume; and

2. A letter that explains your qualifications for service on the Committee and describes in detail how your experience is relevant to the Committee's work.

Your resume and your letter will be weighed equally in the application review process. Please note that by Administration policy, individuals who are registered as Federal lobbyists are not eligible to serve on Federal advisory committees. If you are registered as a Federal lobbyist and you have actively lobbied at any time within the past two years, you are not eligible to apply for membership on the DHS Data Integrity and Privacy Advisory Committee. Applicants selected for membership will be required to certify, pursuant to 28 U.S.C. 1746, that they are not registered as Federal lobbyists.

Please send your documents to Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by *either* of the following methods:

- *Email: PrivacyCommittee@hq.dhs.gov* or
- *Fax:* (202) 343–4010.

**Privacy Act Statement: DHS's Use of Your Information**

*Authority:* DHS requests that you voluntarily submit this information under its following authorities: The *Federal Records Act,* 44 U.S.C. 3101; the FACA, 5 U.S.C. appendix; and the *Privacy Act of 1974,* 5 U.S.C. 552a.

*Principal Purposes:* When you apply for appointment to the DHS Data Privacy and Integrity Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. We will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly-available Committee documents, membership lists, and Committee reports.

*Routine Uses and Sharing:* In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–009 Department of Homeland Security Advisory Committees System of Records Notice (October 3, 2008, 73 FR 63181).

*Effects of Not Providing Information:* You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to consider your application for appointment to the Data Privacy and Integrity Advisory Committee.

*Accessing and Correcting Information:* If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–

002 Department of Homeland Security Mailing and Other Lists System of Records referenced above.

Dated: July 10, 2019.

**Jonathan R. Cantor,**

*Chief Privacy Officer (Acting), Department of Homeland Security.*

[FR Doc. 2019–15009 Filed 7–15–19; 8:45 am]

**BILLING CODE 9110–9L–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### New Agency Information Collection Activity Under OMB Review: TSA Reimbursable Screening Services Program (RSSP) Request

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-Day notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves public and private entities requesting participation in TSA's Reimbursable Screening Services Program (RSSP), currently a pilot program for up to eight locations, to obtain TSA security screening services outside of an existing primary passenger airport terminal screening area where screening services are currently provided or would be eligible to be provided under TSA's annually appropriated passenger screening program.

**DATES:** Send your comments by August 15, 2019. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 6, 2019, 84 FR 19801.

#### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

#### Information Collection Requirement

*Title:* TSA Reimbursable Screening Services Program (RSSP) Request.[1]

*Type of Request:* New collection.

*OMB Control Number:* 1652–XXXX.

*Form(s):* NA.

*Affected Public:* Public or private entities regulated by TSA.

*Abstract:* The RSSP is authorized by section 225, Division A, of the Consolidated Appropriations Act, 2019, Public Law 116–6 (133 Stat. 13; Feb. 15, 2019). Under this provision, TSA may establish a pilot for public or private entities regulated by TSA to request reimbursable screening services outside of an existing primary passenger terminal screening area where screening services are currently provided or eligible to be provided under TSA's annually appropriated passenger screening program. For purposes of section 225, ''screening services'' means ''the screening of passengers, flight crews, and their carry-on baggage and personal articles, and may include checked baggage screening if that type of screening is performed at an offsite location that is not part of a passenger terminal of a commercial airport.'' TSA is collecting this information to establish a process for public and private entities regulated by TSA to request screening services under the RSSP.

*Number of Respondents:* 12.[2]

*Estimated Annual Burden Hours:* An estimated 96 hours annually.

Dated: July 10, 2019.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Information Technology.*

[FR Doc. 2019–15003 Filed 7–15–19; 8:45 am]

**BILLING CODE 9110–05–P**

[1] Since the publication of the 60-day notice, TSA has revised the name of the collection from ''TSA Reimbursable Screening Services Program (RSSP) Application to ''TSA Reimbursable Screening Services Program (RSSP) Request.'' No other changes to the ICR have been made.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7014–N–06]**

### 60-Day Notice of Proposed Information Collection: Housing Counseling Program

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* September 16, 2019.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street

[2] Since the publication of the 60-day notice, the annual burden number has been updated from 154 to 96 hours annually.

SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Terri Ames, Housing Program Specialist, Office of Policy and Grants Administration: Office of Housing Counseling, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Terri.ames@hud.gov,* 202–402–3025. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Housing Counseling Program.

*OMB Approval Number:* 2502–0261.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* HUD 9902, HUD 9906, SF–424, HUD–424CB, SF–425, SF–LLL, HUD 2880.

*Description of the need for the information and proposed use:* This information is collected in connection with HUD's Housing Counseling Program and will be used by HUD to determine that the Housing Counseling grant applicant meets the requirements of the Notice of Funding Availability (NOFA). Information collected is also used to assign points for awarding grant funds on a competitive and equitable basis. HUD's Office of Housing counseling will also use the information to provide housing counseling services through private or public organizations with special competence and knowledge in counseling low and moderate-income families. The information is collected from housing counseling agencies that participate in the HUD Housing Counseling Program. The information is collected via the HUD 9902 (grant activity report) and the form 9906 (grant application chart).

*Respondents (i.e. affected public):* Not-for-profit institutions.

*Estimated Number of Respondents:* 3,375.

*Estimated Number of Responses:* 9,900.

*Frequency of Response:* Quarterly.

*Average Hours per Response:* 49.7.

*Total Estimated Burden:* 20,224 hours.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 25, 2019.

**Vance T. Morris,**

*Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2019–15071 Filed 7–15–19; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[FR–6171–N–01]**

## Credit Watch Termination Initiative Termination of Direct Endorsement (DE) Approval

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

**ACTION:** Notice.

**SUMMARY:** This notice advises of the cause and effect of termination of Direct Endorsement (DE) approval taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees that have had their DE Approval terminated.

**FOR FURTHER INFORMATION CONTACT:** Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–5997 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Relay at (800) 877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999, HUD published a notice (64 FR 26769) on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees that have had their Approval Agreements terminated. HUD Handbook 4000.1 section V.E.3.a.iii outlines current procedures for terminating Underwriting Authority of Direct Endorsement mortgagees.

*Termination of Direct Endorsement Approval:* HUD approval of a DE mortgagee authorizes the mortgagee to underwrite single family mortgage loans and submit them to FHA for insurance endorsement. The approval may be terminated on the basis of poor performance of FHA-insured mortgage loans underwritten by the mortgagee. The termination of a mortgagee's DE Approval is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD regulations at 24 CFR part 25.

*Cause:* HUD regulations permit HUD to terminate the DE Approval of any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and that exceeds the national default and claim rate.

*Effect:* Termination of DE Approval precludes the mortgagee from underwriting FHA-insured single-family mortgages within the HUD field office jurisdiction(s) listed in this notice. Mortgagees authorized to hold or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are those

already underwritten and approved by a DE underwriter and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated mortgagee; however, the cases may be transferred for completion of processing and underwriting to another mortgagee with DE Approval in that geographic area. Mortgagees must continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement if their DE Approval in the affected area or areas has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.10 and 202.12. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for reinstatement must be submitted through the Lender Electronic Assessment Portal (LEAP). The application must be accompanied by the CPA's report and the corrective action plan.

*Action:* The following mortgagees have had their DE Approval terminated by HUD:

| Mortgagee name | Mortgagee home office address | HUD office jurisdiction | Termination effective date | Homeownership center |
|---|---|---|---|---|
| CityWorth Mortgage LLC ... | 11781 Lee Jackson Memorial Highway, Fairfax, VA 22033. | Richmond ..... | 4/29/19 | Philadelphia. |
| CityWorth Mortgage LLC ... | 11781 Lee Jackson Memorial Highway, Fairfax, VA 22033. | Baltimore ..... | 4/29/19 | Philadelphia. |

Dated: July 1, 2019.

**John L. Garvin,**

*General Deputy, Assistant Secretary for Housing.*

[FR Doc. 2019–15072 Filed 7–15–19; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2018–N125; FXES11130400000C2–189–FF04E00000]**

### Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Short's Bladderpod

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and request for public comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft recovery plan for the endangered Short's bladderpod. The draft recovery plan includes specific recovery objectives and criteria that must be met in order for us to recover and ultimately delist the species under the Endangered Species Act of 1973, as amended. We request review and comment on this draft recovery plan from local, State, and Federal agencies and the public.

**DATES:** In order to be considered, comments on the draft recovery plan must be received on or before September 16, 2019.

**ADDRESSES:**

*Reviewing documents:* If you wish to review this draft recovery plan, you may obtain a copy by contacting Geoff Call, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, Tennessee 38506, tel. 931–525–4983; or by visiting the Service's Tennessee Field Office website at *http://www.fws.gov/cookeville.*

*Submitting comments:* If you wish to comment, you may submit your comments by one of the following methods:

1. You may submit written comments and materials to us, at the above address.

2. You may hand-deliver written comments to our Tennessee Field Office, at the above address, or fax them to 931–528–7075.

3. You may send comments by email to *geoff_call@fws.gov.* Please include ''Short's bladderpod Draft Recovery Plan Comments'' on the subject line.

For additional information about submitting comments, see Request for Public Comments below.

**FOR FURTHER INFORMATION CONTACT:** Geoff Call (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

#### Background

Short's bladderpod (*Physaria globosa*) is an upright biennial or perennial plant with several stems, some branched at the base, reaching heights up to 50 centimeters (cm) (20 inches (in.)). The species is restricted to 31 extant occurrences distributed among 4 sections of the Interior Low Plateaus physiographic province: 1 in the Shawnee Hills section (Indiana), 11 occurrences in the Bluegrass (Kentucky), 14 in the Highland Rim, and 5 in the Nashville Basin (both Tennessee). Short's bladderpod typically grows on steep, rocky, wooded slopes and talus (sloping mass of rock fragments below a bluff or ledge) areas. It also occurs along tops, bases, and ledges of bluffs and infrequently on sites with little topographic relief. The species usually is found in these habitats on south- to west-facing slopes near rivers or streams. Most populations are closely associated with calcareous outcrops.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that a species may be listed as endangered or threatened based on one or more of five factors. The greatest threat to Short's bladderpod is loss or degradation of habitat (Listing Factor A). The main causes of habitat degradation or loss include future construction and ongoing maintenance of transportation and utility rights-of way; prolonged inundation and soil erosion due to flooding and water level manipulation; overstory shading due to forest succession; and competition from invasive plant species. Additionally, the species' resilience to these threats and environmental variation is diminished due to the small sizes of many populations (Factor E). We determined that other existing regulatory mechanisms were inadequate to reduce these threats (Listing Factor D). As a result of these threats, Short's

bladderpod was listed as endangered under the Act on August 1, 2014 (79 FR 44712). Approximately 373 hectares (ha) (925.5 acres (ac)), distributed among 20 units in Posey County, Indiana; Clark, Franklin, and Woodford Counties, Kentucky; and Cheatham, Davidson, Dickson, Jackson, Montgomery, Smith, and Trousdale Counties, Tennessee, were designated as critical habitat on August 26, 2014 (79 FR 50990).

**Recovery Plan**

Section 4(f) of the Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions considered necessary for conservation of the species, establish recovery criteria, and estimate time and cost for implementing recovery measures. Section 4(f) of the Act also requires us to provide public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The draft recovery plan describes actions necessary for the recovery of Short's bladderpod, establishes criteria for its delisting, and estimates the time and cost for implementing specific measures needed to recover the species. The ultimate goal of this draft recovery plan is to ensure the long-term viability of the Short's bladderpod in the wild to the point that it can be removed from the Federal List of Endangered and Threatened Plants in title 50 of the Code of Federal Regulations (50 CFR 17.12).

*Recovery Criteria*

The Short's bladderpod will be considered for delisting when:

(1) Agreements have been reached with key stakeholders to conserve, restore, and manage habitat to provide ecological conditions, as described in the Species Status Assessment for Short's bladderpod (SSA), that promote growth of individuals and support resilient populations. (Addresses Listing Factor A.)

(2) Monitoring demonstrates stable or increasing population growth rates or an average population size for at least 25 populations that is equal to or above the minimum viable size. Populations are protected by a conservation mechanism. A minimum of 6 of these populations must be located in the Kentucky River watershed and 15 populations in the Cumberland River watershed, in addition to the population in the Wabash River watershed, in order to ensure adequate regional representation and intra-regional redundancy of resilient populations. (Addresses Listing Factors A and E.)

(3) In lieu of satisfying criteria 1 and 2, the species could be considered for delisting if 50 resilient occurrences (as described in the SSA) are distributed among the physiographic regions where the species occurs. (Addresses Factor A and E.)

**Request for Public Comments**

We request written comments on the draft recovery plan. We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

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.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 15, 2018.

**Mike Oetker,**

*Acting Regional Director, Southeast Region.*

**Editorial Note:** This document was received for publication by the Office of the Federal Register on July 11, 2019.

[FR Doc. 2019–15043 Filed 7–15–19; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

**[GX19NM00FU5010; OMB Control Number 1028–0094/Renewal]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Coal Resources Data System

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before August 15, 2019.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–0094 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Joseph East, Eastern Energy Resources Science Center, by email at *jeast@usgs.gov,* or by telephone at 703–648–6450. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 8, 2019, 84 FR 20161. No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address,

or other personal identifying information in your comment, you should be aware that your 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 primary objective of the U.S. Geological Survey (USGS) National Coal Resources Data System (NCRDS) is to advance the understanding of the energy endowment of the United States by gathering and organizing digital geologic information related to coal, coal bed gas, shale gas, conventional and unconventional oil and gas, geothermal, and other energy resources and related information regarding these resources, along with environmental impacts from using these resources. These data are needed to support regional or national assessments concerning energy resources. Requesting external cooperation is a way for NCRDS to collect energy data and perform research and analyses on the characterization of geologic material, and obtain other information (including geophysical or seismic data, sample collection for generation of thermal maturity data) that can be used in energy resource assessments and related studies.

The USGS will issue a call for proposals to support researchers from State Geological Surveys and associated accredited universities that can provide geologic data to support NCRDS and other energy assessment projects being conducted by the USGS.

Data submitted to NCRDS by external cooperators constitute more than two-thirds of the USGS point-source stratigraphic database (USTRAT) on coal occurrence. This program is conducted under various authorities, including 30 U.S.C. 208–1, 42 U.S.C. 15801, and 43 U.S.C. 31 *et seq.* This collection will consist of applications, proposals and reports (annual and final).

*Title of Collection:* National Coal Resources Data System (NCRDS).

*OMB Control Number:* 1028–0094.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Individuals; State, local and tribal governments; State Geological Surveys, universities, and businesses.

*Total Estimated Number of Annual Respondents:* 21.

*Total Estimated Number of Annual Responses:* 21.

*Estimated Completion Time per Response:* 25 hours.

*Total Estimated Number of Annual Burden Hours:* 525 Hours.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* Annually for progress reports.

*Total Estimated Annual Nonhour Burden Cost:* There are no ''non-hour cost'' burdens associated with this IC.

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.*).

**Margo Corum,**

*Associate Program Coordinator.*

[FR Doc. 2019–15057 Filed 7–15–19; 8:45 am]

**BILLING CODE 4338–11–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1149]**

### Certain Semiconductor Devices, Integrated Circuits, and Consumer Products Containing the Same; Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 15) issued by the presiding administrative law judge (''ALJ''), granting a motion to amend the complaint and notice of investigation.

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or 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 (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. 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 instituted this investigation on April 3, 2019, based on a complaint filed by Innovative Foundry Technologies LLC of Portsmouth, New Hampshire (''IFT''). 84 FR 13065. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 semiconductor devices, integrated circuits, and consumer products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,583,012 (''the '012 patent''); 6,797,572 (''the '572 patent''); 7,009,226; 7,880,236 (''the '236 patent''); and 9,373,548. *Id.* The Commission's notice of investigation named as respondents BBK Communication Technology Co., Ltd., of Dongguan, China; Vivo Mobile Communication Co., Ltd., of Dongguan, China; OnePlus Technology (Shenzhen) Co., Ltd., of Shenzhen, China (''OnePlus''); Guangdong OPPO Mobile Telecommunications Co., Ltd., of Dongguan, China (''Guandong OPPO''); Hisense Electric Co., Ltd. of Quingdao, China; Hisense USA Corporation of Suwanee, Georgia; Hisense USA Multimedia R & D Center Inc. of Suwanee, Georgia; TCL Corporation of Huizhou City, China; TCL Communication, Inc. of Irvine, California; TTE Technology, Inc. (d/b/a TCL America) of Wilmington, Delaware; TCT Mobile (US) Inc. of Irvine, California; VIZIO, Inc. of Irvine, California (''Vizio''); MediaTek Inc. of Hsinchu City, Taiwan; MediaTek USA Inc. of San Jose, California; Mstar Semiconductor, Inc. of ChuPei City, Taiwan; Qualcomm Incorporated of San Diego, California and Qualcomm Technologies, Inc. of San Diego, California (collectively, ''Qualcomm''); Taiwan Semiconductor Manufacturing Company Limited of Hsinchu City, Taiwan; TSMC North America of San Jose, California; and TSMC Technology, Inc. of San Jose, California. *Id.* at 13066. The Office of Unfair Import Investigations (''OUII'') is participating in this investigation. *Id.*

On May 27, 2019, IFT moved to amend the complaint and notice of investigation to correct information regarding OnePlus and Guandong OPPO, and to add as a respondent

DongGuan OPPO Precision Electronic Corp, Ltd., a subsidiary of Guandong OPPO. IFT also moved to add allegations asserting the '012, '572, and '236 patents against Qualcomm and Vizio based on information learned in discovery. On May 29, 2019, Qualcomm and Vizio opposed the amendment and argued that IFT could have discovered the relevant information through diligent investigation. On June 5, 2019, IFT moved for leave to file a reply in support of its motion.

On June 13, 2019, the ALJ, pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)), issued the subject ID, granting the motion to amend the complaint and notice of investigation. The ALJ also granted leave to file the reply. No petitions for review of the ID were received.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 10, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–15012 Filed 7–15–19; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1150]**

### Certain Data Transmission Devices, Components Thereof, Associated Software, and Products Containing the Same; Commission Determination Not To Review an Initial Determination To Terminate the Investigation With Respect to All Name Respondents Based on Withdrawal of the Complaint; and Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined not to review an initial determination (''ID'') (Order No. 8) to terminate the investigation with respect to all named respondents based on the withdrawal of the complaint. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation are or 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 (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On April 5, 2019, the Commission instituted the present investigation based on a complaint filed by Data Scape Ltd. of Sandyford, Ireland, and C-Scape Consulting Corp. of Rockville Centre, New York (collectively, ''Complainants''). 84 FR 13717 (April 5, 2019). The complaint alleges violations of 19 U.S.C. 1337, as amended (''Section 337''), in the importation, sale for importation, and sale in the United States after importation of certain data transmission devices, components thereof, associated software, and products containing the same that allegedly infringe one or more of the asserted claims of U.S. Patent Nos. 7,720,929; 7,617,537; and 8,386,581. *Id.* The notice of investigation named the following respondents: Verizon Communications, Inc. (''VCI'') of New York, New York; Cellco Partnership d/b/a Verizon Wireless of Basking Ridge, New Jersey (''Verizon Wireless''); Apple Inc. of Cupertino, California; Amazon.com, Inc. of Seattle, Washington; and Amazon Digital Services, LLC of Seattle, Washington (collectively, ''Respondents''). The Office of Unfair Import Investigations (''OUII'') was also named as a party. *Id.*

The Commission previously terminated the investigation with respect to VCI. Order No. 6 (May 16, 2019), *not reviewed,* Comm'n Op. (June 16, 2019).

On May 29, 2019, Complainants filed an unopposed motion to withdraw the complaint and terminate the investigation as to all named respondents. Complainants also moved to stay the investigation's procedural schedule pending the outcome of the motion. On May 31, 2019, Respondents filed a response supporting the motion because the U.S. District Court for the Central District of California recently held that each of the patents at issue is invalid under 35 U.S.C. 101 for failure to claim patentable subject matter. On June 6, 2019, OUII also filed a response in support of the motion.

On May 30, 2019, the presiding administrative law judge (''ALJ'') issued Order No. 7, granting the request to stay the procedural schedule. On June 13, 2019, the ALJ issued the subject ID (Order No. 8) granting the motion to terminate the investigation. No party filed a petition to review the subject ID.

The Commission has determined not to review the subject ID. This investigation is terminated.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 10, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–15011 Filed 7–15–19; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On July 11, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Illinois in the lawsuit entitled *United States* v. *Clean Harbors Recycling Services of Chicago, LLC, et al.,* Civil Action No. 19–cv–4657.

The United States filed a Complaint in this lawsuit seeking civil penalties and injunctive relief from Defendants Clean Harbors Recycling Services of Chicago, LLC, and Clean Harbors Recycling Services of Ohio, LLC (collectively ''Clean Harbors'') for alleged violations of the Clean Air Act, 42 U.S.C. 7401–7671q, at Clean Harbors' spent industrial solvent treatment, storage, and disposal facilities in Chicago, Illinois, and Hebron, Ohio (the ''Facilities''). The Complaint alleges that Clean Harbors has violated statutory and regulatory requirements applicable to solvent storage tanks at the Facilities arising under the Clean Air Act and National Emission Standards for Hazardous Air Pollutants (''NESHAP'') regulations promulgated by the U.S.

Environmental Protection Agency, including the NESHAP general provisions (codified at 40 CFR part 63, subpart A) and the NESHAP for Off-Site Waste and Recovery Operations (codified at 40 CFR part 63, subpart DD).

When the Complaint was filed, the United States also lodged a proposed Consent Decree that would settle the claims asserted in the Complaint. Among other things, the proposed Consent Decree would require Clean Harbors to implement appropriate injunctive relief to control air pollutant emissions from storage tanks at the Facilities, undertake additional mitigation measures to help offset unauthorized past air pollutant emissions, and pay a total of $405,000 in civil penalties to the United States.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Clean Harbors Recycling Services of Chicago, LLC, et al.,* D.J. Ref. No. 90–5–2–1–11990. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit* comments: | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Randall M. Stone,**

*Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2019–15087 Filed 7–15–19; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Exemption Application No. D–11962]**

### Proposed Exemption From Certain Prohibited Transaction Restrictions Credit Suisse Group AG (CSG) and Its Current and Future Affiliates, Including Credit Suisse AG (CSAG) (Collectively, Credit Suisse or the Applicant) Located in Zurich, Switzerland

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document contains notice of pendency before the Department of Labor (the Department) of a proposed temporary five-year individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If this proposed exemption is granted, certain entities with specified relationships to CSAG will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14.

**DATES:** If granted, this exemption will be effective for five years following the date exemptive relief is no longer available under PTE 2015–14.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by August 30, 2019.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, Attention: Application No. D–11962 or via private delivery service or courier to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 122 C St. NW, Suite 400, Washington, DC 20001. Attention: Application No. D–11962. Interested persons may also submit comments and/or hearing requests to EBSA via email to *e-OED@dol.gov* or by FAX to (202) 693–8474, or online through *http://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Blessed Chuksorji-Keefe of the Department at (202) 693–8402. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

#### Comments

Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

**WARNING:** All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for

clarification, EBSA might not be able to consider your comment. Additionally, the *http://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

**Background**

On May 19, 2014, CSAG entered a guilty plea for assisting U.S. citizens in federal income tax evasion. On November 21, 2014, the District Court entered a judgment of conviction (the Conviction) against CSAG. As a result of the Conviction, QPAMs with certain corporate relationships to CSAG, as well as its client plans that are subject to Part 4 of Title I of ERISA (ERISA—covered plans) or section 4975 of the Code (IRAs), could no longer rely on PTE 84–14 without an individual exemption issued by the Department. As described below, in order to protect plans and IRAs managed by CS-related QPAMs, the Department issued a temporary one-year exemption allowing Credit Suisse Affiliated and Related QPAMs to continue to rely on PTE 84–14, if numerous conditions were met. Prior to the expiration of that exemption, the Department issued another exemption allowing Credit Suisse Affiliated and Related QPAMs to continue to rely on PTE 84–14 for a period of four years and ten years respectively, if numerous conditions were met. On June 14, 2018, the Applicant filed an exemption request for Credit Suisse Affiliated asset managers to continue to rely on PTE 84–14 after the November 20, 2019, expiration of the four-year exemption.

The Department is proposing this exemption to protect plans and IRAs that use Credit Suisse Affiliated QPAMs, from the costs and expenses that may arise if those asset managers are no longer able to rely on the relief provided by PTE 84–14.

This proposed five-year exemption, if granted, provides relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed five-year exemption would terminate immediately if, among other things, an entity within the Credit Suisse corporate structure is convicted of any crime covered by Section I(g) of PTE 84–14 (other than the Conviction during the effective period of the proposed five-year exemption. While such an entity could apply for a new exemption in that circumstance, the Department is not obligated to grant a requested exemption.

The terms of this proposed five-year exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with the Applicant.

When interpreting and implementing this exemption, the Applicant and the Credit Suisse Affiliated QPAMs should resolve any ambiguities in light of the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations, at 202–693–8540.

**Summary of Facts and Representations** [1]

*The Applicant(s)*

1. Credit Suisse Group AG (CSG) is a publicly-traded corporation headquartered in Zurich, Switzerland. CSG and its affiliates (which are collectively referred to herein as the Applicant or Credit Suisse) operate in about 50 countries and currently have approximately 46,720 employees. As of December 31, 2017, CSG and its consolidated subsidiaries had total balance sheet assets of CHF 796 billion, and total shareholders' equity of CHF 42 billion (approximately $817 billion and $43 billion, respectively).

2. CSG owns a 100% interest in Credit Suisse AG (CSAG). CSAG operates as a bank, in Switzerland and abroad. CSAG currently has two affiliates: CSAM LLC and CSAM Ltd. that manage the assets of ERISA-covered plans on a discretionary basis. CSAG also owns a five percent or more interest in certain other entities that may provide investment management services to plans (the CS Related QPAMs), but that are not affiliates of CSAG.

*ERISA and Code Prohibited Transactions and PTE 84–14*

3. The rules set forth in section 406 of ERISA and section 4975(c)(1) of the Code proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans. Under ERISA such parties are known as ''parties in interest.'' Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.[2] The prohibited transaction provisions under section 406(a) of ERISA and 4975(c)(1) of the Code prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[3] Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such ''prohibited transactions'' in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

4. Prohibited Transaction Exemption 84–14 (PTE 84–14) [4] exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) [5] in which a plan has an interest, if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions for the exemption. PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.[6]

5. However, Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by PTE 84–14, for itself and its client

[1] The Summary of Facts and Representations is based on the Applicant's representations, unless indicated otherwise.

[2] Under the Code such parties, or similar parties, are referred to as ''disqualified persons.''

[3] The prohibited transaction provisions also include certain fiduciary prohibited transactions under section 406(b) of ERISA and 4975(c)(1)(E) and (F) of the Code. These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries. PTE 84–14 provides only very narrow conditional relief for transactions described in Section 406(b) of ERISA.

[4] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[5] An ''investment fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

[6] See 75 FR 38837, 38839 (July 6, 2010).

plans, if that entity or an ''affiliate'' [7] thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section. Section I(g) was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.[8]

*The Guilty Plea and the Conviction*

6. On May 19, 2014, in the U.S. District Court for the Eastern District of Virginia (the District Court),[9] the U.S. Department of Justice charged CSAG with, and CSAG pled guilty to, one criminal count of conspiracy to violate Code section 7206(2).[10] As described in further detail below, the charging documents cite the Applicant and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., for willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009.

7. On May 19, 2014, pursuant to a plea agreement (the Plea Agreement), CSAG entered a guilty plea for assisting U.S. citizens in federal income tax evasion. On November 21, 2014, the District Court entered a judgment of conviction (the Conviction). As part of its sentence, CSAG agreed to pay a total of $2.815 billion, which included: (a) A criminal fine of $1.33 billion; (b) restitution to the IRS of $0.67 billion; (c) a civil penalty of $715 million to New York State; and (d) a civil penalty of $100 million to the Federal Reserve.

8. As a result of the Conviction, QPAMs with certain corporate relationships to CSAG, as well as its client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), cannot rely on PTE 84–14 without an individual exemption issued by the Department.

*Prior Exemptions and the Public Hearing*

9. On September 3, 2014, the Department published a proposed exemption (the First Proposed Exemption) for certain entities with specified relationships to CSAG, to continue to rely upon the relief provided by PTE 84–14, notwithstanding the Conviction.[11] The Department received ten comments and four requests for a hearing regarding the First Proposed Exemption.

10. The requested hearing could not be held prior to the date of the Conviction, so, in order to protect plans and IRAs managed by CS-related QPAMs, the Department issued a temporary exemption.[12] The temporary exemption allowed Credit Suisse asset managers to continue to rely on PTE 84–14, for one year following the date of the Conviction, while the Department determined whether further relief would be protective of affected plans and IRAs.

11. The public hearing (requested by commenters to the First Proposed Exemption) was held on January 15, 2015. The Department considered all the testimony and information provided at the hearing, and all the issues raised by the commenters, and thereafter published the Second Final Exemption.[13] The Second Final Exemption addressed all the material information and issues submitted in connection with the hearing.

*Current Exemption Request*

12. On June 14, 2018, the Applicant filed an exemption request for Credit Suisse Affiliated asset managers to continue to rely on PTE 84–14 after the November 20, 2019, expiration of the Second Final Exemption. The request was for an exemption modeled on PTE 2015–14, with certain exceptions. On August 24, 2018, the Applicant submitted a letter in further support of its request (the CSAG Letter). In the CSAG Letter, the Applicant requested that the Department ''not make small, nonmaterial language changes [to the conditions of this exemption] that do not change the substance of the provision[s] but nonetheless will require changes to Credit Suisse's policies and training, and explanations to its clients.'' The Applicant stated further that while ''it understands the Department's interest in consistency, this goal should not override the expense, effort and confusion for clients that such changes would cause.'' The Applicant notes that the facts underlying the Second Final Exemption have not changed, and the Department already found the Second Final Exemption to be in the interest of and protective of affected plans and IRAs, and administratively feasible.

13. In developing administrative exemptions under Section 408(a) of ERISA, the Department seeks to implement its statutory directive to grant only exemptions that are appropriately protective of affected plans and IRAs and in their interest. In discharging this obligation, the Department will sometimes impose conditions that depart from those provided in older exemptions based on the Department's experience with those exemptions, the Department's conclusion that new or revised conditions will better serve the interests of affected plans and IRAs, similar changes in more recent exemptions applicable to other firms providing the same services, and other factors. Many of the conditions of this exemption are new or revised, relative to the Second Final Exemption, reflecting the Department's current views on how best to ensure that Covered Plans are adequately protected. In general, the revised conditions are the same as or similar to conditions imposed in other recent Section I(g) exemptions. The distinctions between the conditions in the Second Final Exemption and this proposed exemption are material.

For example, the Second Final Exemption requires that ''(t)he Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs did not directly receive compensation in connection with the criminal conduct of Credit Suisse AG that is the subject of the Conviction.'' CSAG states that this condition is ''substantively the same'' as a parallel provision in the Department's most recent line of QPAM Section I(g) exemptions. However, the analogous provision in those exemptions, and in this proposed exemption further require that the CS Affiliated QPAMs and the CS Related QPAMs must not have knowingly received indirect compensation in connection with the

[7] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[8] See 47 FR 56945, 56947 (December 21, 1982).

[9] *United States of America* v. *Credit Suisse AG,* Case Number 1:14–cr–188–RBS.

[10] Section 7206(2) of the Code prohibits willfully aiding, assisting, procuring, counseling, or advising the preparation or presentation of false income tax returns. Section 371 of Title 18 of the United States Code generally prohibits two or more persons from conspiring either to commit any offense against the United States or to defraud the United States.

[11] See 79 FR 52365.

[12] See 79 FR 68716.

[13] The proposal to the Second Final Exemption was published on November 18, 2014, at 79 FR 68712.

criminal conduct of CSAG that is the subject of the Conviction.

As another example, Section I(g) of PTE 2015–14 provides that, ''Each Credit Suisse Affiliated QPAM will ensure that it does not engage or employ any person involved in the criminal conduct that underlies the Conviction in connection with the transactions involving any 'investment fund' (as defined in PTE 84–14) subject to ERISA and managed by such Credit Suisse Affiliated QPAMs.'' Although CSAG asserts that Section I(g) of the Second Final Exemption is ''substantively the same'' as the analogous provision in the Department's most recent line of cases, the analogous condition in those exemptions, and in this proposed exemption, contains a more expansive prohibition against hiring individuals engaging in wrongful misconduct, requiring that, ''(t)he CS Affiliated QPAMs will not employ or knowingly engage any of the individuals that 'participated in' the criminal conduct of CSAG that is the subject of the Conviction, where 'participate in' refers not only to active participation in the criminal conduct of CSAG that is the subject of the Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors.''

Other meaningful distinctions between the Second Final Exemption and the Department's most recent line of QPAM Section I(g) exemptions are described below. In all cases, the revised conditions of this exemption are consistent with the record provided by the Applicant, and the Department's understanding of the facts attributable to the Conviction. CSAG has not demonstrated that the revised conditions would confuse fiduciaries of Covered Plans, or would cause unnecessary expense to CSAG and/or its QPAMs, as it asserts.

14. A summary of the proposed exemption appears below, and is organized into several parts. The first part describes the conditions in this proposed exemption that are materially similar to the conditions in CS's soon-to-expire exemption (*i.e.,* the Second Final Exemption or PTE 2015–14). The second part summarizes the conditions in this proposed exemption that are new or enhanced, relative to the Second Final Exemption. The third part describes the Applicant's request that certain exceptions be made to one of the conditions described in the Second Final Exemption. The fourth part summarizes this proposed exemption's audit requirement, and the Applicant's comment regarding the necessity of the audit. The remaining parts summarize the Department's findings.

I. *Conditions in this Proposed Exemption that are Substantially Similar to Conditions in CS's Second Final Exemption.*

15. This proposed exemption requires that any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction.

16. Further, this proposed exemption requires that each CS Affiliated QPAM continue to maintain, adjust or immediately implement and follow written Policies designed to protect the interests of plans and IRAs in conformity with fiduciary standards.[14] The written Policies cover a range of issues, from asset management decisions of the CS Affiliated QPAMs to the CS Affiliated QPAM's compliance with ERISA's fiduciary duties. The proposed exemption requires the continuation of a program of training for each Credit Suisse Affiliated QPAM's relevant legal, compliance, management and internal audit personnel. In addition, the CS Affiliated QPAMs must promptly address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) on strengthening the Policies and Training of the respective CS Affiliated QPAM. Finally, each CS Affiliated QPAM must maintain for six years the records necessary to demonstrate that the conditions of this proposed five-year exemption have been met.

II. *Conditions in this Proposed Exemption that Contain Material Distinctions with the Second Final Exemption.*

17. The Second Final Exemption provided that the CS Affiliated and Related QPAMs did not participate in the criminal conduct that was the subject of the Conviction. This proposed exemption adds clarifying language to that condition, consistent with the record provided by the Applicant. Accordingly, the proposed exemption mandates that the CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and certain CSAG employees described below) did not know of, have reason to know of, or ''participate in'' the criminal conduct of CSAG that is the subject of the Conviction. The proposed exemption clarifies further that ''participate in'' refers not only to active participation in the criminal conduct of CSAG, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to supervisors, and to the Board of Directors. In this regard, unless the individual reasonably believed that his or her initial report was given an appropriate response within a reasonable time, the individual must have further reported the criminal conduct to the person or persons the individual reasonably expected would carry out the appropriate response. Whether an individual reasonably believed that an appropriate response was taken turns on the facts and circumstances.

18. The Second Final Exemption provided that the CS Affiliated and Related QPAMs did not directly receive compensation in connection with the criminal conduct. This proposed exemption expands that prohibition in a manner that is consistent with the record provided by the Applicant, and the Department's understanding of the facts attributable to the Conviction. In addition to the Second Final Exemption requirement that the CS Affiliated and Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and certain CSAG employees described below) did not directly receive compensation in connection with the criminal conduct, this proposed exemption further specifies that the CS Affiliated QPAMs and the CS Related QPAMs did not knowingly receive indirect compensation in connection with the criminal conduct of CSAG.

19. The Second Final Exemption provided that criminal conduct of CSAG that is the subject of the Conviction did not directly or indirectly involve the assets of an ERISA-covered Plan or IRA. Whereas that condition in the Second Final Exemption focused on the criminal conduct of CSAG, this proposed exemption contains a condition that focuses on the conduct of the CS Affiliated and Related QPAMs. This proposed exemption requires that no CS Affiliated QPAM or CS Related QPAM exercised authority over the assets of an ERISA-covered plan or IRA in a manner that it knew or should have known would: Further criminal conduct that is the subject of the Conviction; or cause the CS Affiliated QPAM or CS Related QPAM, its affiliates, or related parties to directly or indirectly profit

[14] The Department notes that a CS Affiliated QPAM established after November 20, 2019 would need to immediately implement and follow written Policies, where CS Affiliated QPAMs established prior to that date must have already immediately implemented and followed the written Policies.

from the criminal conduct that is the subject of the Conviction.

20. The Second Final Exemption required that each Credit Suisse Affiliated QPAM ensure that none of its employees or agents, if any, that were involved in the criminal conduct underlying the Conviction will engage in transactions on behalf of any investment fund managed by the QPAM. This proposed exemption expands that prohibition, in a manner that is consistent with the record provided by the Applicant, and the Department's understanding of the facts attributable to the Conviction. In this regard, this proposed exemption prohibits each CS Affiliated QPAM from employing or knowingly engaging any of the individuals that ''participated in'' the criminal conduct of CSAG that is the subject of the Conviction, where ''participated in'' refers not only to active participation in the criminal conduct of CSAG, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors. In this regard, unless the individual reasonably believed that his or her initial report was given an appropriate response within a reasonable time, the individual must further report the criminal conduct to the person or persons the individual reasonably expected would carry out the appropriate response. Whether an individual reasonably believed that an appropriate response was taken turns on the facts and circumstances.

21. The Second Final Exemption provided that CSAG would not provide any fiduciary services to ERISA-covered Plans or IRAs, except in connection with securities lending services of the New York branch of CSAG, or act as a QPAM. this proposed exemption mandates instead that CSAG will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, other than with respect to employee benefit plans sponsored for its own employees or employees of an affiliate, or in connection with securities lending services of the New York branch of CSAG.

22. The Second Final Exemption requires that the CS Affiliated QPAMs agree to certain conduct and standards, and to refrain from certain conduct, in their dealings with ERISA-covered plans and IRAs.[15] This condition was intended to ensure that, when an ERISA-covered plan or IRA entered into an asset management agreement with a CS Affiliated QPAM in reliance on the manager's qualification as a QPAM, the plan or IRA could expect adherence to basic fiduciary norms and standards of fair dealing, notwithstanding the Conviction. The condition was further intended to ensure that the ERISA-covered plan or IRA could disengage from that relationship, without undue injury.

This proposed exemption enhances those important protections. Specifically, each CS Affiliated QPAM must not only agree, but must also warrant, to Covered Plans: (a) To comply with ERISA and the Code, as applicable with respect to the Covered Plan; (b) not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the CS Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (c) not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM; (d) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance; (e) not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of the agreement's terms; (f) to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable; and (g) to provide a notice of its obligations to each Covered Plan. Further, this proposed exemption requires that by January 21, 2020, each CS Affiliated QPAM is required to provide a notice of the five-year exemption, along with a separate summary describing the facts that led to the Conviction.

23. The Second Final Exemption required that the CS Affiliated QPAM comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. This proposed exemption clarifies that if, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84–14, (other than the Conviction), including a conviction in a foreign jurisdiction for a crime described in Section I(g) of PTE 84–14, relief in this proposed exemption would terminate immediately.

24. Unlike the Second Final Exemption, this proposed exemption requires CSAG to immediately disclose to the Department any Deferred Prosecution Agreement or Non-Prosecution Agreement that Credit Suisse Group AG or CSAG or any affiliate enters into with the U.S Department of Justice. This proposed exemption also requires that, by May 20, 2020, CSAG must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. Further, by May 20, 2020, each CS Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, must clearly inform Covered Plan clients of their right to obtain a copy of the Policies or a description which accurately summarizes key components of the CS Affiliated QPAM's Policies developed in connection with this proposed exemption.

25. Finally, under this proposed exemption, a Credit Suisse Affiliated QPAM will fail to meet the terms of this exemption if: (a) A different Credit Suisse Affiliated QPAM (or a Credit Suisse Related QPAM) knew of, had reason to know of, or participated in the criminal conduct of CSAG that is the subject of the Conviction; (b) a CS Affiliated QPAM or a CS Related QPAM (including their officers, directors, agents other than CSAG, and employees of such QPAMs) received direct

[15] Specifically, condition (k) of the Second Final Exemption requires that, each Credit Suisse Affiliated QPAM agrees: (1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive, limit, or qualify the liability of the Credit Suisse Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Credit Suisse Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Credit Suisse AG; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Credit Suisse Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors.

compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of CSAG that is the subject of the Conviction; (c) any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84–14 arose from a conviction other than the Conviction; (d) a CS Affiliated QPAM or a CS Related QPAM exercised authority over the assets of an ERISA-covered plan or an IRA in a manner that it knew or should have known would: Further criminal conduct that is the subject of the Conviction; or cause the CS Affiliated QPAM, its affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction; (e) with limited exceptions, CSAG acts as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered Plan and IRA assets; (f) CSAG fails to designate a Compliance Officer, or if the Compliance office fails to meet his or her responsibilities under the exemption; and (g) CSAG fails to immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) Credit Suisse Group AG or CSAG or any affiliate enters into with the U.S. Department of Justice, to the extent such DPA or NPA relates to the conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA, or (h) if CSAG fails to immediately provide the Department any information requested by the Department, as permitted by law, regarding any agreement under subparagraph (g) and/or the conduct and allegations that led to the agreement.

III. *Applicant's Request for Exceptions to Section I(f) of CS's Second Final Exemption.*

26. Section I(f) of the Second Final Exemption provides, in relevant part, that a CS Affiliated QPAM will not use its authority or influence to direct an investment fund to enter into any transaction with CSAG, or engage CSAG to provide any service to such investment fund, for a direct or indirect fee borne by the investment fund.[16] The Applicant requests that the Department add three exceptions to this proposed condition:

*Request 1. CSAG Should Be Permitted to Act as Local Sub-Custodian.*

27. The Applicant notes that Section I(f) of the Second Final Exemption precludes a CS Affiliated QPAM from investing plan assets in a market where CSAG or its branch or affiliate might serve as the sub-custodian CSAG. In this regard, this condition might not be met if a CS Affiliated QPAM invests plan assets in a market where CSAG or its branch or affiliate might serve as the sub-custodian, even where the CS Affiliated QPAM has no role in selecting the global custodian, or the local sub-custodians in its network. According to the Applicant, Section I(f) of the Second Final Exemption may only be met by prohibiting plans managed by the CS Affiliated QPAMs from investing in that market. In that event, the Applicant asserts that Plans that want to invest with the CS Affiliated QPAMs would be deprived of the ability to choose from a full slate of investment products, and would be compelled to invest in a different product, or with an alternate investment manager, which could have an adverse impact on investment performance.

28. The Applicant notes that the Department previously expressed concern that sub-custodian arrangements had ERISA section 406(b) implications, and PTE 84–14 only provides relief from section 406(a) of ERISA.[17] In the Applicant's view, a CS Affiliated QPAM's investment in a market where an unaffiliated global custodian has selected a CSAG affiliate as its local subcustodian does not automatically result in a violation of section 406(b) of ERISA. The Applicant states it should be capable of factually demonstrating when sub-custodial arrangements do not violate ERISA section 406(b).

29. The Applicant states that preventing a plan from investing in markets covered by its chosen strategy and chosen investment manager, could have an adverse impact on investment performance in that strategy. For ERISA-covered plans, there are four primary global custodians. None of these are affiliated with CSAG. The global custodian may not have a local custodian in its network in every market where an investment manager trades on behalf of its clients. In such instances, the global custodian will engage a local sub-custodian. The global custodian's choice of local sub-custodian is based on factors including potential local sub-custodians' credit, efficiency in trade processing, back office functions, and tax reclaims processing. None of these factors are related to asset management. When a plan's custodian uses more than one local sub-custodian in a market, the decision of the plan's custodian on how to divide its custody clients among those local subcustodians is entirely its own.

30. The Applicant requests that Section I(d) of this proposed exemption contain an exception that permits CSAG and its branches and affiliates to serve as local sub-custodians.

*Department's Response to Request that CSAG Should Be Permitted to Act as Local Sub-Custodian.*

31. The Department is tentatively persuaded that, in narrow circumstances, plans and IRAs would benefit from the broader range of investment options that may result from CSAG affiliates being permitted to serve as local sub-custodians. However, given the magnitude of CSAG's fraudulent misconduct, the Department is not proposing that CSAG itself or its branches be permitted to act as local sub-custodians in these arrangements. Accordingly, Section I(d) of this proposed exemption contains an exception that permits CSAG affiliates to serve as a local sub-custodian, if the global custodian and the sub-custodian are selected by someone other than a CSAG-related entity. This proposed exemption requires each CS Affiliated QPAM to have policies and procedures in place to ensure that its asset management decisions are not made with any consideration of the fee a related local sub-custodian may receive. Further, the auditor must review these policies and procedures and test a representative sample of transactions involving CSAG affiliates that serve as a local sub-custodian.

*Request 2. CSAG Should be Permitted to Provide Support Services to CS Affiliated QPAMs.*

32. The Applicant notes that Section I(f) of the Second Final Exemption may prevent CSAG from providing services supporting the operations of the CS Affiliated QPAM, without cost to an ERISA-covered plan or IRA (*e.g.,* at the QPAM's own expense). These services include necessary non-investment, non-fiduciary ''back-office'' or ''middle-office'' administrative functions such as human resources, information technology, finance, accounting, legal, compliance, treasury, and tax services.

[16] In its entirety, Section I(f) of the Second Final Exemption provides that, ''A Credit Suisse Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA and managed by such Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption[.]''

[17] In granting the Second Final Exemption, the Department expressed concern, in relation to Section I(f), that a CS Affiliated QPAM might effectively use its ''authority or influence to direct'' an investment fund to ''enter into'' a ''transaction with'' Credit Suisse AG or ''provide additional services, for a fee borne by'' the investment fund.

Currently, certain CS asset managers that do not manage ERISA money use CSAG for these types of services.

33. The Applicant requests that Section I(d) of this proposed exemption contain an exception which permits CSAG to provide the services described above to CS Affiliated QPAMs.

*Department's Response to Request that CSAG Be Permitted to Provide Support Services to CS Affiliated QPAMs.*

34. Section I(d) of this proposed exemption contains an exception that permits CSAG to provide only necessary, non-investment-related and non-fiduciary administrative services to CS Affiliated QPAMs, solely at the QPAM's own expense. Given its misconduct, the Department is not proposing that CSAG be allowed to provide services to investment funds managed by CSAG. The auditor must make express findings regarding the Applicant's compliance with this condition, and these findings must be set forth in the written report.

*Request 3. The Exemption Should Permit CS Employees To Be Seconded to CS Affiliated QPAMs.*

35. The Applicant states that, from time to time, employees from other affiliates are ''seconded'' to a CS-affiliated asset manager. Although these employees are paid by their home location, they are fully subject to the authority, control, and supervision of the QPAM, and to all of its rules, regulations, and restrictions. The Applicant requests that, consistent with recent QPAM Section I(g) exemptive relief for other convicted entities, the Department clarify that Section I(d) of the proposed exemption will not be violated if employees from other affiliates are ''seconded'' to a CS Affiliated QPAM.

*Department's Response to Request that the Exemption Permit CS Employees To Be Seconded to CS Affiliated QPAMs.*

36. Section I(d) of this proposed exemption contains an exception allowing employees from CSAG affiliates to be seconded to a CS-affiliated asset manager.

IV. *The Audit Requirement.*

37. The Applicant requested that, unlike the Second Final Exemption, this proposed exemption not contain an annual audit requirement. The Applicant states that the independent auditor found the compliance environment of the CS Affiliated QPAMs to be compliant. The Applicant states that over the last several audits, the auditor made no suggestions for improving the compliance environment. The Applicant represents that the audits have been detailed, comprehensive, and exacting. For example, the auditor reviewed systems used by the QPAMs to effect compliance, met in person and by phone several times during each audit with operations personnel and others, reviewed floorplans and physical information barriers, and discussed and reviewed the CS Affiliated QPAMs' incident reports. In addition, the auditor sampled and reviewed accounts and transactions, reviewed the ERISA compliance manual, the proxy voting policy, the global error handling policy, the performance fee policy, organizational charts, information technology protocols to restrict access to electronic systems based on user profiles, investment management agreements with investment guidelines, various reports, including the training mandated by the exemption, and the roster of employees trained. The auditor matched guidelines to investment guidelines monitoring exception reports, and noted that alerts or warnings were promptly addressed with either an explanation or correction. Finally, the auditor reviewed the trade blotters and systems to determine whether the transactions complied with the prohibited transaction rules.

38. The Applicant states that over the course of four audits, the independent auditor has thoroughly examined the CS Affiliated QPAMs' ERISA compliance programs, and has not made any findings of noncompliance with the Second Final Exemption (which requires compliance with ERISA generally, including its prohibited transaction and fiduciary responsibility provisions), PTE 84–14, or their internal ERISA policies. To the contrary, the Applicant represents that the independent auditor has found that the CS Affiliated QPAMs have: (a) Updated and consolidated-their policies and procedures; (b) developed and implemented ERISA training; and (c) complied with PTE 84–14, the Second Final Exemption, and their internal ERISA policies. Thus, the Applicant is of the view that these audits have demonstrated the CS Affiliated QPAMs' comprehensive and robust ERISA compliance environment.

39. The Applicant states that these factors demonstrate that the CS Affiliated QPAMs had strong controls in place before the Second Final Exemption was granted, which have improved since the exemption was issued. The Applicant requests that the Department conclude that an additional five years of exemptive relief is warranted for the CS Affiliated QPAMs, and that the relief not be conditioned on an annual audit.

*Department's Response to Request for Removal of Annual Audit Requirement.*

40. The Department is not removing the Annual Audit Requirement. The Conviction arose from serious, prolonged and widespread misconduct. According to the Statement of Facts filed in the criminal case (the Statement of Facts), for decades prior to and through approximately 2009, CSAG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts [18] concealing their offshore assets and income from the IRS. Private bankers employed by CSAG (referred to as ''Relationship Managers'' or ''RMs'') served as the primary contact for U.S. clients with undeclared accounts at CSAG. CSAG used a variety of means to assist U.S. clients in concealing their undeclared accounts, including: (a) Assisting clients in using sham entities as nominee beneficial owners of the undeclared accounts; (b) soliciting IRS forms that falsely stated under penalty of perjury that the sham entities beneficially owned the assets in the accounts; (c) failing to maintain in the United States records related to the accounts; (d) destroying account records sent to the United States for client review; (e) using Credit Suisse managers and employees as unregistered investment advisors on undeclared accounts; (f) facilitating withdrawals of funds from undeclared accounts by either providing hand-delivered cash in the United States or using Credit Suisse's correspondent bank accounts in the United States; (g) structuring transfers of funds to evade currency transaction reporting requirements; and (h) providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

41. Given the above, the four annual audits of the CS Affiliated QPAMs do not provide an adequate basis for the Department to determine that asset managers controlled by CSAG should be allowed to engage in prohibited transactions, unmonitored, over the next five years, using an exemption that otherwise relies on an asset manager's integrity. The five additional consecutive years of in-depth audits required by this proposed exemption are essential to the Department's findings

[18] An ''undeclared account'' is a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that has not been reported by the individual account owner to the U.S. government on an income tax return and a Report of Foreign Bank and Financial Accounts. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income.

that this proposed exemption will be protective of Covered Plans.

*This Proposed Exemption's Audit Requirement*

42. Section I(i) of this proposed five-year exemption requires that each CS Affiliated QPAM submit to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and the CS Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. Each annual audit must cover a consecutive twelve month period starting with the twelve month period that begins on the effective date of the proposed five-year exemption, and each annual audit must be completed no later than six (6) months after the period to which the audit applies.

43. The audit condition requires that, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. This access is limited to information that is relevant to the auditor's objectives, as specified by the proposed exemption.

44. The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained and followed the Policies in accordance with the conditions of this proposed five-year exemption, and has developed and implemented the training, as required herein, and must further require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each CS Affiliated QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training.

45. For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor may issue one consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding: (a) The adequacy of the CS Affiliated QPAM's Policies and Training; (b) the CS Affiliated QPAM's compliance with the Policies and Training; (c) the need, if any, to strengthen such Policies and Training; and (d) any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training.

46. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM, and any action taken or the plan of action to be taken by the CS Affiliated QPAM must be included in an addendum to the Audit Report (the addendum must be completed prior to the certification described below). In the event a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed.

47. Any determination by the auditor that the respective CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the CS Affiliated QPAM has complied with the requirements herein must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained and followed the Policies and Training required by this proposed five-year exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor. Finally, the Audit Report must address the adequacy of the Annual Exemption Review required under this proposed exemption.

48. Further, the auditor must notify the respective CS Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. In addition, this proposed five-year exemption requires that certain senior personnel of CSAG review the Audit Report, make certain certifications, and take various corrective actions. In this regard, the General Counsel, or one of the three most senior executive officers of the CS Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this proposed five-year exemption; and that to the best of such officer's knowledge at the time the CS Affiliated QPAM has: (a) Addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report; and (b) determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed five-year exemption and with the applicable provisions of ERISA and the Code.

49. The Risk Committee, the Audit Committee, and CSAG's Board of Directors are provided a copy of each Audit Report; and a senior executive officer of CSAG's Compliance function must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that the officer has reviewed each Audit Report.

50. In order to create a more transparent record in the event that the proposed relief is granted, each CS Affiliated QPAM must provide its certified Audit Report to the Department no later than 30 days following its completion. The Audit Report will be part of the public record regarding this proposed five-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan, the assets of which are managed by such CS Affiliated QPAM.

51. Additionally, any engagement agreement entered into pursuant to the engagement of the auditor under this proposed five-year exemption must be submitted to the Department's Office of Exemption Determinations (OED). Finally, if the proposed five-year exemption is granted, the auditor must provide the Department, upon request, for inspection and review, access to all of the workpapers created and used in

connection with the audit, provided the access and inspection are otherwise permitted by law.

52. In order to enhance oversight of the compliance with the proposed exemption, CSG must notify the Department no later than two (2) months after the engagement of a substitute or subsequent auditor, and CSG must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and CSG.

*Statutory Findings*

53. Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. These criteria are discussed below.

a. ''*Administratively Feasible.*'' The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering, among other things, each CS Affiliated QPAM's compliance with the proposed exemption, and a corresponding written audit report will be provided to the Department and available to the public. The independent audit will provide an incentive for and measure of compliance, while reducing the immediate need for review and oversight by the Department.

b. ''*In the interest of.*'' The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of each affected Covered Plan. It is the Department's understanding, based on representations from the Applicant, that if the requested exemption is denied, the CS Affiliated QPAMs may be unable to effectively manage plan assets subject to ERISA or the prohibited transaction provisions of the Code. The CS Affiliated QPAMs state that this would cause client ERISA-covered plans to question the prudence of retaining the CS Affiliated QPAMs as a manager of choice, and client ERISA-covered plans could feel compelled to find other managers who could manage their assets without having to either forego transactions or rely on other more complex prohibited transaction exemptions.

54. The CS Affiliated QPAMs have represented that if client ERISA-covered plans were to move to new asset managers they could incur transition costs including the costs associated with identifying an asset manager (such as the costs and management time required in a Request for Proposal process, consultant fees and other due diligence expenses), brokerage and other transaction costs associated with the sale of portfolio investments to accommodate the investment policies and strategy of the new asset manager, the opportunity costs of holding cash pending investment by the new asset manager, and lost investment opportunities in connection with a change of asset managers. The CS Affiliated QPAMs claim that losing the ability to use PTE 84–14 would make it difficult, costly, and impracticable to enter into many transactions that are in the best interests of client ERISA-covered plans, reducing plan choices, especially among large institutional financial banks.

55. The CS Affiliated QPAMs represent further that if the requested exemption is not granted, client ERISA-covered plans may be effectively prohibited from entering into certain transactions, either because no other exemption is available or the counterparty is not willing to enter into the transaction without the protections provided by PTE 84–14. The CS Affiliated QPAMS state that these transactions would include those not covered by other exemptions such as a purchase or sale from a party in interest of a security without a readily ascertainable fair market value. The CS Affiliated QPAMs claim that the loss of the ability to utilize PTE 84–14 could significantly delay or even make impossible transactions that would be beneficial for the ERISA-covered plans because other statutory and class prohibited transaction exemptions are not broad enough to cover such routine transactions entered at the direction of the CS Affiliated QPAMs. The CS Affiliated QPAMs also represent that counterparties could seek to terminate contracts for certain outstanding transactions (including swaps) that require the CS Affiliated QPAMs to represent that they are QPAMs and/or utilize PTE 84–14 and additionally, pursuant to these contracts, swap transactions with certain counterparties could automatically and immediately be terminated without any notice or action of such counterparties, even if other prohibited transaction exemptions are available. The CS Affiliated QPAMs further claim that such a termination could result in significant losses for the client ERISA-covered plans that would be avoided if the proposed exemption were granted.

c. ''*Protective of.*'' The Department has tentatively determined that the exemption, as proposed, will be protective of the rights of participants and beneficiaries of Covered Plans. As described above, the proposed exemption is subject to a suite of conditions, including: (a) The creation, maintenance and compliance with policies and procedures (the Policies); (b) the implementation of and participation in a comprehensive training program (the Training); (c) a robust annual audit conducted by an independent auditor evaluating the CS Affiliated QPAMs' operational compliance with the Policies and Training, to be submitted to the Department and made available as part of the public record; (d) the provision of certain agreements and warrants on the part of the CS Affiliated QPAMs with respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan for which the CS Affiliated QPAM provides asset management or other discretionary fiduciary services, including provisions requiring compliance with ERISA and the Code, as well as indemnification of such Covered Plans for any actual losses resulting directly from certain enumerated actions by the CS Affiliated QPAM; (e) specific notice and disclosure requirements with respect to the circumstances leading to this proposed exemption and compliance with the proposed exemption; and (f) the designation of a Compliance Officer responsible for compliance with the Policies and Training requirements and the completion by the Compliance Officer of an annual Exemption Review and corresponding Exemption Report; and (g) the immediate disclosure by CSAG to the Department of any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that CSAG or an affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA in connection with the conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA, and any additional information requested by the Department in connection therewith.

*Summary*

56. Given the conditions described above, the Department has tentatively determined that the five-year relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code.

**Notice to Interested Persons**

Notice of the proposed exemption will be provided to all interested

persons within fifteen (15) days of the publication of the notice of proposed five-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner described in Section I(k) of this proposed five-year exemption and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty five (45) days of the date of publication of this proposed five-year exemption in the **Federal Register**. All comments will be made available to the public.

**Warning:** If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

**Proposed Five-Year Exemption**

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[19]

*Section I. Covered Transactions*

If the proposed five-year exemption is granted, the CS Affiliated QPAMs, as further defined in Section II(d), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14),[20] notwithstanding the ''Conviction'' against CSAG (as further defined in Section II(a)),[21] during the Exemption Period, provided that the following conditions are satisfied:

(a) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d) below) did not know of, have reason to know of, or participate in the criminal conduct of CSAG that is the subject of the Conviction. For purposes of this exemption, including paragraph (c) below, ''participate in'' refers not only to active participation in the criminal conduct of CSAG that is the subject of the Conviction, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to such individual's supervisors, and to the Board of Directors. In this regard, unless the individual reasonably believed that his or her initial report was given an appropriate response within a reasonable time, the individual must further report the criminal conduct to the person or persons the individual reasonably expected would carry out the appropriate response.

(b) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of CSAG that is the subject of the Conviction;

(c) The CS Affiliated QPAMs will not employ or knowingly engage any of the individuals that ''participated in'' the criminal conduct of CSAG that is the subject of the Conviction;

(d) At all times during the Exemption Period, a CS Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such CS Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with CSAG or to engage CSAG to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. A CS Affiliated QPAM will not fail this condition solely because:

(1) A CSAG affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a CS Affiliated QPAM or CS Related QPAM;

(2) CSAG provides only necessary, non-investment, non-fiduciary services that support the operations of CS Affiliated QPAMs, at the CS Affiliated QPAM's own expense, and the Covered Plan is not required to pay any

[19] For purposes of this proposed five-year exemption, references to section 406 of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[20] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[21] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain criminal activity therein described.

additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment fund managed by a CS Affiliated QPAM or CS Related QPAM; or

(3) CSAG employees are double-hatted, seconded, supervised, or subject to the control of a CS Affiliated QPAM;

(e) Any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A CS Affiliated QPAM or a CS Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further criminal conduct that is the subject of the Conviction; or cause the CS Affiliated QPAM or CS Related QPAM, its affiliates, or related parties to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) CSAG will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered Plan and IRA assets, except it may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. CSAG will not be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) Each CS Affiliated QPAM must continue to maintain, adjust (to the extent necessary) or immediately implement and follow written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the CS Affiliated QPAMs are conducted independently of CSAG's corporate management and business activities, and without considering any fee a CS-related local sub-custodian may receive from those decisions. This condition does not preclude a CS Affiliated QPAM from receiving publicly available research and other widely available information from a CSAG affiliate;

(ii) The CS Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case, as applicable, with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The CS Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the CS Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of, or in relation to Covered Plans are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of its knowledge at the time, the CS Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The CS Affiliated QPAM complies with the terms of this five-year exemption, and CSAG complies with the terms of Section I(d)(2);

(2) Any violation of, or failure to comply with, an item in subparagraphs (h)(1)(ii) through (vi) of this section, is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon discovery of such failure to so correct, in writing, to appropriate corporate officers, the head of Compliance and the General Counsel (or their functional equivalent) of the relevant CS Affiliated QPAM, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this paragraph (2);

(3) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), and implement a program of training (the Training), conducted at least annually, for all relevant CS Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this five-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code;

(i)(1) Each CS Affiliated QPAM submits to three audits, conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each CS Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first audit must cover the 24 month period that begins on November 21, 2019. The second audit must cover the 24 month period that begins on November 21, 2021, and the third audit must cover the 12 month period that begins on November 21, 2023. Each audit must be completed no later than six (6) months after the period to which the audit applies; [22]

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives, as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this five-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test

[22] Periods prior to November 21, 2019 must be audited consistent with PTE 2015–14.

each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of: (1) Each CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAG affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAMs to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of the CS Affiliated QPAM's Policies and Training; the CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The CS Affiliated QPAMs must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section I(m);

(6) The auditor must notify the respective CS Affiliated QPAMs of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the CS Affiliated QPAMs to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this five-year exemption; that to the best of such officer's knowledge at the time the CS Affiliated QPAM addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and the applicable provisions of ERISA and the Code;

(8) The Risk Committee, the Audit Committee, and CSAG's Board of Directors are provided a copy of each Audit Report; and the head of Compliance and the General Counsel must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each CS Affiliated QPAM must provide its certified Audit Report, by regular mail to: The Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. The delivery must take place no more than 30 days following the completion of the Audit Report. The Audit Report will be part of the public record regarding this five-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the execution of the engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all of the workpapers created and used in connection with the audit, provided the access and inspection are otherwise permitted by law; and

(12) CSG must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and CSAG;

(j) As of the effective date of this five-year exemption, with respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan, each CS Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to the Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by a CS Affiliated QPAM or any claim arising out of the failure of such CS Affiliated QPAMs to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition only applies to actual losses caused by the CS Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the CS Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of the agreement's terms. To the extent consistent with section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of CSAG and its affiliates, or damages arising outside the control of the CS Affiliated QPAM; and

(7) Within four (4) months of the effective date of this five-year exemption, each CS Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a CS Affiliated QPAM on or after November 21, 2019, the CS Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the CS Affiliated QPAM and such clients or other written contractual agreement. Notwithstanding the above, a CS Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2015–14 that meets the terms of this condition.

(k) *Notice to Covered Plan Clients.* Each CS Affiliated QPAM provides a notice of the five-year exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary and Statement must be provided prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the CS Affiliated QPAM. If this five-year exemption is granted, the clients must receive a **Federal Register** copy of the notice of final five-year exemption within sixty (60) days of its publication in the **Federal Register**. The notice may be delivered electronically (including by an email that has a link to the five-year exemption).

(l) The CS Affiliated QPAM must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84–14, (other than the Conviction), including a conviction in a foreign jurisdiction for a crime described in Section I(g) of PTE 84–14, relief in this exemption would terminate immediately;

(m)(1) By May 20, 2020, CSAG designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each twelve month period, beginning on November 21, 2019, (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest ranking corporate officer in charge of compliance for asset management;

(2) With respect to each Annual Exemption Review, the following conditions must be met:

(i) The Annual Exemption Review includes a review of the CS Affiliated QPAMs compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent audit report issued pursuant to this exemption or PTE 2015–14; any material change in the relevant business activities of the CS Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the CS Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Exemption Review (each, an Annual Exemption Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements

described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Exemption Report; and (D) the CS Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) Each Annual Exemption Report must be provided to appropriate corporate officers of CSAG and each CS Affiliated QPAM to which such report relates; the head of Compliance and the General Counsel (or their functional equivalent) of the relevant CS Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Annual Exemption Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each CS Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this five-year exemption have been met, for six (6) years following the date of any transaction for which the CS Affiliated QPAM relies upon the relief in the five-year exemption;

(o) During the Exemption Period, CSAG: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that Credit Suisse Group AG or CSAG or any affiliate (as defined in Section VI(d) of PTE 84–14) enters into with the U.S Department of Justice, to the extent such DPA or NPA relates to the conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or the conduct and allegations that led to the agreement;

(p) Within 60 days of the effective date of the five-year exemption, each CS Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the CS Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[23] With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(q) A CS Affiliated QPAM will not fail to meet the terms of this five-year exemption, solely because a different CS Affiliated QPAM fails to satisfy a condition for relief under this five-year exemption described in Sections I(c), (d), (h), (i), (j), (k), (l), (n), and (p); or, if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of CSAG or its affiliates.

*Section II. Definitions*

(a) The term ''Conviction'' means the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14–cr–188–RBS, on November 21, 2014.

(b) The term ''Covered Plan'' means a plan subject to Part 4 of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to section 4975 of the Code (an ''IRA''), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84–14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term ''CSAG'' means Credit Suisse AG.

(d) The term ''CS Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which CSAG is a current or future ''affiliate'' (as defined in Section VI(d) of PTE 84–14), but is not a CS Related QPAM. The term ''CS Affiliated QPAM'' excludes the parent entity, CSAG.

(e) The term ''CS Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which CSAG owns a direct or indirect five (5) percent or more interest, but with respect to which CSAG is not an ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14).

(f) The term ''Exemption Period'' means the period from November 21, 2019 through November 20, 2024.

*Effective Date:* If granted, this proposed five-year exemption will be in effect for five years beginning on the expiration of PTE 2015–14.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

Signed at Washington, DC, this 10th day of July, 2019.

**Lyssa E. Hall,**

*Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2019–15069 Filed 7–15–19; 8:45 am]

**BILLING CODE 4510–29–P**

[23] In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

## LIBRARY OF CONGRESS

### Copyright Royalty Board

**[Docket No. 16–CRB–0010–SD (2014–17)]**

### Distribution of Satellite Royalty Funds

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice requesting comments.

**SUMMARY:** The Copyright Royalty Judges solicit comments on a motion of Allocation Phase claimants for partial distribution of 2016 and 2017 satellite royalty funds.

**DATES:** Comments are due on or before August 15, 2019.

**ADDRESSES:** Interested claimants must submit timely comments, identified by docket number 16–CRB–0010–SD (2014–17), by only *one* of the following means:

*CRB's online electronic filing application:* Submit comments online in the Copyright Royalty Board's electronic filing system, eCRB, at *https://app.crb.gov/;* or

*U.S. mail or overnight service (only USPS Express Mail is acceptable):* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

*Commercial courier:* Address package to: Copyright Royalty Board, Library of

Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

*Hand delivery:* Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

*Instructions:* Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change (including any personal information provided) to eCRB at *https://app.crb.gov/.*

*Docket:* For access to the docket to read submitted background documents or comments, go to eCRB at *https://app.crb.gov/* and search for docket number 16–CRB–0010–SD (2014–17).

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** Each year satellite systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 119 of the Copyright Act for the retransmission to satellite subscribers of over-the-air television broadcast signals. *See* 17 U.S.C. 119(b). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. 17 U.S.C. 119(b)(5)(A), 801(b)(3)(A). If all claimants do not reach an agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 119(b)(5)(B), 801(b)(3)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 119(b)(5)(C), 801(b)(3)(C).

On June 28, 2019, representatives of all the Allocation Phase claimant categories (formerly ''Phase I'') [1] filed with the Judges a motion requesting a partial distribution amounting to 40% of the 2016 and 2017 satellite royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution. Accordingly, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 40% of the 2016 and 2017 satellite royalty funds to the Allocation Phase Claimants. Parties objecting to the proposed partial distribution must advise the Judges of the existence and extent of all their objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of the comment period.

The Motion of the Allocation Phase Claimants is available in eCRB at *https://app.crb.gov/case/viewDocument/4397.*

Dated: July 11, 2019.

**Jesse M. Feder,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. 2019–15099 Filed 7–15–19; 8:45 am]

**BILLING CODE 1410–72–P**

[1] The ''Allocation Phase Claimants'' are Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants.

## 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 August 15, 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:** NCSES 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 NCSES, including whether the information will have practical utility; (b) the accuracy of NCSES's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

*Title of Collection:* Higher Education Research and Development Survey.

*OMB Approval Number:* 3145–0100.

*Summary of Collection.* The Higher Education Research and Development (R&D) Survey (formerly known as the Survey of R&D Expenditures at Universities and Colleges) originated in fiscal year (FY) 1954 and has been conducted annually since FY 1972. The survey represents one facet of the higher education component of the NSF's National Center for Science and

Engineering Statistics (NCSES) statistical program authorized by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950 (NSF Act), as amended, at 42 U.S.C. 1862. Under paragraph ''b'', NCSES is directed to

''(1) collect, acquire, analyze, report, and disseminate statistical data related to the science and engineering enterprise in the U.S. and other nations that is relevant and useful to practitioners, researchers, policymakers, and the public, including statistical data on:

(A) Research and development trends;

(B) the science and engineering workforce;

(C) U.S. competitiveness in science, engineering, technology, and research and development . . .''

*Use of the information:* The proposed project will continue the annual survey cycle for three years. The Higher Education R&D Survey will provide continuity of statistics on R&D expenditures by source of funding, type of R&D (basic research, applied research, or development), and field of R&D, with separate data requested on research equipment by field. Further breakdowns are collected on funds passed through to subrecipients and funds received as a subrecipient, and on R&D expenditures by field from specific federal agency sources. As of FY 2010, the survey also requests total R&D expenditures funded from foreign sources, R&D within an institution's medical school, clinical trial expenditures, R&D by type of funding mechanism (contracts vs. grants), and R&D by cost category (salaries, equipment, software, etc.). The survey also requests headcounts of principal investigators and other personnel paid from R&D funds.

Data are published in NCSES's annual publication series *Higher Education Research and Development,* available on the web at *http://www.nsf.gov/statistics/srvyherd/*.

*Expected respondents:* The FY 2019 Higher Education R&D Survey will be administered to approximately 650 institutions. In addition, a shorter version of the survey asking for R&D expenditures by source of funding and broad field will be sent to approximately 300 institutions spending under $1 million on R&D in their previous fiscal year. Approximately 125 institutions are also expected to respond to the population screener form sent to determine eligibility for the survey. Finally, a survey requesting R&D expenditures by source of funds, cost categories, and type of R&D will be administered to the 42 Federally Funded Research and Development Centers.

*Estimate of burden:* The survey is a fully automated web data collection effort and is handled primarily by administrators in university sponsored programs and accounting offices. To minimize burden, institutions are provided with an abundance of guidance and resources on the web, and are able to respond via downloadable spreadsheet if desired. Each institution's record is pre-loaded with the 2 previous years of comparable data that facilitate editing and trend checking. Response to this voluntary survey has exceeded 95 percent each year.

The average burden estimate is 54 hours for the approximately 650 institutions reporting over $1 million in R&D expenditures on the standard form, 8 hours for the approximately 300 institutions reporting less than $1 million on the short form, and 11 hours for the 42 organizations completing the FFRDC survey. Another 1 hour per institution is estimated for the approximately 125 institutions responding to the HERD population screener form. The total calculated burden across all forms is 38,087 hours.

*Comments:* As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through publication of a 60-Day Notice in the **Federal Register** on March 18, 2019, at 84 FR9839. Three comments were received, to which we here respond. One comment came from the Bureau of Economic Analysis (BEA). They expressed general support for the HERD and FFRDC surveys and requested that they be informed of any future questionnaire modifications. NCSES is in regular contact with BEA about their data needs and sends annual data files to support their national income and product accounts (NIPAs), industry economic accounts (IEAs), and gross domestic product (GDP) by state estimates. BEA noted the specific items used from each survey.

The second comment came from the University of Washington. They indicated that the HERD survey is very useful for the research community as a key set of data. They believe the burden estimate is low, based on their experience. They provided examples of work elements that comprise their overall HERD survey effort. They noted that clear definitions in some areas, specifically reporting of institutionally-funded research, and enforced adherence to the definitions is critical for maintaining integrity and comparability across institutions. In order to minimize survey burden, they suggested NCSES minimize yearly changes to the survey content and instructions (perhaps to every 2–3 years), ensure that the survey is coordinated with federal-wide data standards, and allow for data uploads. NCSES plans to reach out to the University of Washington to further discuss the issues raised. We also plan to investigate the potential for a more robust data upload option. Currently, participants can upload their data through an MS Excel workbook questionnaire. This requires manual data entry into the workbook. The NCSES Survey of Graduate Students and Postdoctorates in S&E has a data upload option that users can populate through report automation and could be used as a model for the HERD survey.

The third comment came from the University of Wisconsin, Madison. They also highlighted the HERD survey burden and mentioned that the current Excel file upload must be manually populated. This creates the potential for errors. A file format that could be uploaded after automatically being generated by the respondent would be more efficient and reliable. This is something that NCSES will explore. They also noted that NCSES was considering a revision to the HERD survey that would permit multiple campuses within a system to report together under certain criteria. After discussions and solicitation of feedback from the Council on Government Relations and the Association of American Universities Data Exchange, as well as individual universities, NCSES has decided to keep the established criteria for reporting campus-level data in place. No changes to the guidance are forthcoming, which is also in line with the University of Wisconsin's desire. NCSES plans to reach out to the University of Washington to further discuss the issues raised.

Dated: July 10, 2019.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2019–15014 Filed 7–15–19; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB Review; Comment Request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the

following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, 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 August 15, 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:** NCSES may not conduct or sponsor a collection of information unless (a) the collection of information displays a currently valid OMB control number and (b) the agency informs potential persons that they are not required to respond unless the information collection 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 NCSES, including whether the information will have practical utility; (b) the accuracy of NCSES's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

*Title of Collection:* Survey of Science and Engineering Research Facilities.

*OMB Approval Number:* 3145–0101.

*Summary of Collection:* The National Science Foundation Survey of Science and Engineering Research Facilities is a Congressionally mandated (Public Law 99–159; NSF Act of 1950, as amended; America COMPETES Reauthorization Act of 2010), biennial survey that has been conducted since 1986. As required by law, the survey collects data on the amount, condition, and costs of the physical facilities used to conduct science and engineering research. Congress expected this survey to provide the data necessary to describe the status and needs of science and engineering research facilities.

*Use of the Information:* Analysis of the Facilities Survey data will provide updated information on the status of scientific and engineering research facilities and capabilities. Statistics on the square footage of R&D space available, the condition of R&D space, and the costs for new construction, repairs, and renovation of R&D space at higher education institutions by S&E field are produced from the survey. The sources of funding for new construction and repair and renovation projects are also published. The survey information can be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by institutional academic officials, the scientific/engineering establishment, and state agencies and legislatures that fund universities. Detailed statistical tables and a summary InfoBrief are available at *http://nsf.gov/statistics/srvyfacilities/.* Data reports can also be run from the NCSES Interactive Data Tool.

*Expected Respondents:* The Facilities Survey is a census of institutions that performed at least $1 million in separately budgeted science and engineering research and development in the previous fiscal year.

In the most recent FY 2017 Facilities Survey, a census of 575 academic institutions was conducted. The sampling frame used for the survey was the FY 2016 Higher Education Research and Development Survey conducted by the National Center for Science and Engineering Statistics. Data are collected through a Web-based interface, although institutions have the option of printing and completing a PDF that can be sent by mail.

*Estimate of Burden:* The Facilities Survey will be sent to approximately 600 academic institutions for the FY 2019 and FY 2021 data collection cycles. Response to this voluntary survey is typically 98 percent each cycle. The completion time per academic institution is expected to average 19 hours, based on completion time estimates provided by all survey participants in the FY 2013 survey. This would result in an estimated burden of 11,400 hours per cycle.

*Comments:* As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through publication of a 60-Day Notice in the **Federal Register** on March 18, 2019, at 84 FR 9840. No comments were received.

Dated: July 10, 2019.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2019–15018 Filed 7–15–19; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0194]**

### Information Collection: Specific Domestic Licenses To Manufacture or Transfer Certain Items Containing Byproduct 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, ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.''

**DATES:** Submit comments by August 15, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0001), 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–2018–0194 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 *https://www.regulations.gov* and search for Docket ID NRC–2018–0194.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://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 653, 653A and 653B are available in ADAMS under Accession Nos. ML19175A091 and ML19037A053, 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.

• *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 *https://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, ''10 CFR Part 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct 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 April 2, 2019 (84 FR 12643).

1. *The title of the information collection:* Title 10 of the *Code of Federal Regulations* (CFR), part 32, ''Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.''

2. *OMB approval number:* 3150–0001.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 653, NRC Form 653A, and NRC Form 653B.

5. *How often the collection is required or requested:* There is a one-time submittal of information to receive a certificate of registration for a sealed source and/or device. Certificates of registration for sealed sources and/or devices can be amended at any time. In addition, licensee recordkeeping must be performed on an on-going basis, and reporting of transfer of byproduct material must be reported every calendar year, and in some cases, every calendar quarter.

6. *Who will be required or asked to respond:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees, or persons exempt from licensing, medical use product distributors to specific licensees, and those requesting a certificate of registration for a sealed source and/or device.

7. *The estimated number of annual responses:* 3,197 [2,637 reporting + 252 recordkeepers + 308 third-party recordkeepers].

8. *The estimated number of annual respondents:* 617 (180 NRC licenses, registration certificate holder, and 437 Agreement States licensees and registration certificate holders).

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 66,585 (18,405 reporting + 1,112 recordkeeping + 47,068 third-party).

10. *Abstract:* 10 CFR part 32, establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees, or persons exempt from licensing, medical use product distributors to specific licensees, and those requesting a certificate of registration for a sealed source and/or device. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a certificate of registration for a sealed source and/or device, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. As mentioned, 10 CFR part 32 also prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR part 32 requirements. The information is used by the NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

Dated at Rockville, Maryland, this 11th day of July, 2019.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2019–15040 Filed 7–15–19; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2019–0143]**

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Biweekly notice.

**SUMMARY:** Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act

requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from June 18, 2019 to June 28, 2019. The last biweekly notice was published on July 2, 2019.

**DATES:** Comments must be filed by August 15, 2019. A request for a hearing must be filed by September 16, 2019.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0143. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2019–0143 facility name, unit number(s), plant docket number, application date, and subject 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 *https://www.regulations.gov* and search for Docket ID NRC–2019–0143.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2019–0143 facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

## III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

*A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at

*hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

*Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station (PNPS), Plymouth County, Massachusetts*

*Date of amendment request:* April 25, 2019. A publicly-available version is in ADAMS under Accession No. ML19115A225.

*Description of amendment request:* The amendment would remove the existing Cyber Security Plan (CSP) requirements contained in License Condition 3.G of the PNPS Renewed Facility Operating License and the commitment to fully implement the CSP by the Milestone 8 commitment date of December 31, 2020 (ADAMS Accession No. ML17290A487).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Following cessation of power operations and removal of all spent fuel from the reactor, spent fuel at PNPS will be stored in the SFP [spent fuel pool] and in the independent spent fuel storage installation (ISFSI). In this configuration, the spectrum of possible transients and accidents is significantly reduced compared to an operating nuclear power reactor. The only design basis accident that could potentially result in an offsite radiological release at PNPS is the FHA [fuel handling accident], which is predicated on spent fuel being stored in the SFP. An analysis has been performed that concludes that once PNPS has been permanently shut down for 46 days, there is no longer any possibility of an offsite radiological release from a design basis accident that could exceed the EPA's [Environmental Protection Agency] PAGs [protective action guidelines]. The results of this analysis have been previously submitted to the NRC (ADAMS Accession No. ML18186A635) (Reference 4 [of Entergy's letter dated April 25, 2019]). With the significant reduction in radiological risk based on PNPS being shut down for more

than 46 days, the consequences of a cyber-attack are also significantly reduced.

This proposed change does not alter previously evaluated accident analysis assumptions, introduce or alter any initiators, or affect the function of facility structures, systems, and components (SSCs) relied upon to prevent or mitigate any previously evaluated accident or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed change does not involve any facility modifications which affect the performance capability of any SSCs relied upon to prevent or mitigate the consequences of any previously evaluated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This proposed change does not alter accident analysis assumptions, introduce or alter any initiators, or affect the function of facility SSCs relied upon to prevent or mitigate any previously evaluated accident, or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed change does not involve any facility modifications which affect the performance capability of any SSCs relied upon to mitigate the consequences of previously evaluated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Additionally, per an NRC Memorandum, Cyber Security Requirements for Decommissioning Nuclear Power Plants (Reference 3 [of Entergy's letter dated April 25, 2019, ADAMS Accession No. ML16172A284, dated December 5, 2016]), the NRC staff has determined that 10 CFR 73.54 does not apply to reactor licensees that have submitted certifications of permanent cessation of power operations and permanent removal of fuel under 10 CFR 50.82(a)(1), and whose certifications have been docketed by the NRC 10 CFR 50.82(a)(2). PNPS [has] permanently remove[d] all fuel under 10 CFR 50.82(a)(1) in June 2019 and submit[ted] the required documentation stating so [ADAMS Accession No. ML19161A033]. Entergy has provided a site-specific analysis (Calculation No. PNPS–EC–73355–M1418, Adiabatic Heatup Analysis for Drained Spent Fuel Pool) (PNPS site-specific Zirconium-Fire Analysis) that provides the determination that sufficient time will have passed prior to the requested implementation date such that the spent fuel stored in the spent fuel pool cannot reasonably heat up to clad ignition temperature within 10 hours.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation and design features specified in the PNPS Permanently Defueled Technical Specifications that were submitted to the NRC on September 13, 2018 (Reference 8 [of Entergy's letter dated April 25, 2019, ADAMS Accession No. ML18260A085, dated September 13, 2018]). The NRC anticipates approval of the submittal in July 2019. The proposed change does not involve any changes to the initial conditions that establish safety margins and does not involve modifications to any SSCs which are relied upon to provide a margin of safety. Because there is no change to established safety margins as a result of this proposed change, no significant reduction in a margin of safety is involved.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Susan H. Raimo, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

*NRC Acting Branch Chief:* Lisa M. Regner.

*Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–32 1 and 50–366, Edwin I. Hatch Nuclear Plant (HNP), Unit Nos. 1 and 2, Appling County, Georgia*

*Date of amendment request:* April 24, 2019. A publicly-available version is in ADAMS under Accession No. ML19114A456.

*Description of amendment request:* The amendments would revise certain technical specifications to remove the requirements for engineered safety feature (ESF) systems (*e.g.,* secondary containment, secondary containment valve isolation capability, and standby gas treatment (SGT) system) to be operable after sufficient radioactive decay of irradiated fuel has occurred following a plant shutdown. The amendments would revise technical specification (TS) TS 3.3.6.2, ''Secondary Containment Isolation Instrumentation;'' TS 3.6.4.1, ''Secondary Containment;'' TS 3.6.4.2, ''Secondary Containment Isolation Valves;'' and TS 3.6.4.3, ''Standby Gas Treatment System.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment does not affect accident initiators or precursors nor adversely alter the design assumptions, conditions, and configuration of the facility. The proposed amendment does not alter any plant equipment or operating practices with respect to such initiators or precursors in a manner that the probability of an accident is increased.

The proposed amendment does not involve a physical change to the secondary containment or spent fuel area systems, nor does it change the safety function of the secondary containment, secondary containment isolation valves, SGT system, and associated refueling floor exhaust radiation isolation instrumentation. The subject ESF systems are not assumed in the mitigation of an [fuel handling accident] FHA after sufficient radioactive decay of irradiated fuel has occurred. In addition, FHA dose analysis shows that [main control room] MCR dose remains below the 10 CFR 50.67(b)(2)(iii) dose limit and off-site dose remains below the accident dose limit specified in the NRC [standard review plan] SRP, which represents a small fraction of 10 CFR 50.67 dose limits.

As a result, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

*Response:* No.

With respect to a new or different kind of accident, there are no proposed design changes to the safety related plant structures, systems, and components (SSCs); nor are there any changes in the method by which safety related plant SSCs perform their specified safety functions. The proposed amendment will not affect the normal method of plant operation or revise any operating parameters. No new accident scenarios, transient precursor, failure mechanisms, or limiting single failures will be introduced as a result of this proposed change and the failure modes and effects analyses of SSCs important to safety are not altered as a result of this proposed change. The proposed amendment does not alter the design or performance of the related SSCs, and, therefore, does not constitute a new type of test.

No changes are being proposed to the procedures that operate the plant equipment and the change does not have a detrimental impact on the manner in which plant equipment operates or responds to an actuation signal.

Therefore, the proposed change will not create the possibility of a new or different accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The margin of safety is related to the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment.

Instrumentation safety margin is established by ensuring the limiting safety system settings (LSSSs) automatically actuate the applicable design function to correct an abnormal situation before a safety limit is exceeded. Safety analysis limits are established for reactor trip system and ESF actuation system instrumentation functions related to those variables having significant safety functions. The proposed change does not alter the design of these protection systems; nor are there any changes in the method by which safety related plant SSCs perform their specified safety functions.

The proposed amendment does not involve a physical change to the secondary containment or spent fuel area systems, nor does it change the safety function of the secondary containment, secondary containment isolation valves, SGT system, and associated refueling floor exhaust radiation isolation instrumentation. The subject ESF systems are not assumed in the mitigation of an FHA after sufficient radioactive decay of irradiated fuel has occurred. The HNP FHA dose analysis shows that MCR dose remains below the 10 CFR 50.67(b)(2)(iii) dose limit and off-site dose remains below the accident dose limit specified in the NRC SRP, which represents a small fraction of 10 CFR 50.67 dose limits.

The controlling parameters established to isolate or actuate required ESF systems during an accident or transient are not affected by the proposed amendment and no design basis or safety limit is altered as a result of the proposed change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.

*NRC Branch Chief:* Michael T. Markley.

*Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia*

*Date of amendment request:* April 30, 2019. A publicly-available version is in ADAMS under Accession No. ML19123A101.

*Description of amendment request:* The amendments would revise Unit 1 and Unit 2 technical specification (TS) 3.3.8.1, ''Loss of Power (LOP) Instrumentation'' to modify the instrument allowable values for the Unit 1 4.16 kilovolt (kV) emergency bus degraded voltage instrumentation and delete the annunciation requirements for the Unit 1 4.16 kV emergency bus under voltage instrumentation, including associated TS actions. These proposed amendments would also delete Unit 1 License Condition 2.C(11) and Unit 2 License Condition 2.C(3)(i). Additionally, the proposed amendments would revise surveillance requirement (SR) 3.8.1.8 in TS 3.8.1, ''AC Sources—Operating,'' to increase the voltage limit in the emergency diesel generator (DG) full load rejection test for the Unit 1 DGs.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change incorporates concomitant changes to the [loss of power] LOP instrumentation requirements to reflect an electrical power system modification by deleting the unnecessary loss of voltage annunciation requirements and increasing the [allowable values] AVs for the degraded voltage protection instrumentation.

The proposed license change does not involve a physical change to the LOP instrumentation, nor does it change the safety function of the LOP instrumentation or the equipment supported by the LOP instrumentation.

Automatic starting of the [emergency diesel generator] DGs is assumed in the mitigation of a design basis event upon a loss of offsite power. This includes transferring the normal offsite power source to an alternate or emergency power source in the event of a sustained degraded voltage condition. The LOP instrumentation continues to provide this capability and is not altered by the proposed license change. The proposed change does not adversely affect accident initiators or precursors including a loss of offsite power or station blackout. The revised LOP degraded instrumentation setpoints ensure that the Class 1E electrical distribution system is separated from the offsite power system prior to damaging the safety related loads during sustained degraded voltage conditions while avoiding an inadvertent separation of safety-related buses from the offsite power system. Additionally, the degraded voltage instrumentation time delay will isolate the Class 1E electrical distribution system from offsite power before the diesel generators are ready to assume the emergency loads, which is the limiting time basis for mitigating system responses to design basis accidents.

In addition, the proposed change includes an increase of the voltage limit in the DG full load rejection surveillance test for the Unit 1 DGs. The DGs' safety function is solely mitigative and is not needed unless there is a loss of offsite power. The DGs do not affect any accident initiators or precursors of any accident previously evaluated. The proposed increase in the TS SR voltage limit does not affect the DGs' interaction with any system whose failure or malfunction can initiate an accident.

Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased. The DG safety function is to provide power to safety related components needed to mitigate the consequences of an accident following a loss of offsite power.

The purpose of the [technical specification] TS [surveillance requirement] SR voltage limit is to assure DG damage protection following a full load rejection. The technical analysis performed to support this proposed amendment has demonstrated that the DGs can withstand voltages above the proposed limit without a loss of protection. The proposed higher limit will continue to provide assurance that the DGs are protected, and the safety function of the DGs will be unaffected by the proposed change. Therefore, the consequences of an accident previously evaluated will not be significantly increased.

As a result, the proposed change does not significantly alter assumptions relative to the mitigation of an accident or transient event and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

With respect to a new or different kind of accident, the proposed change does not alter the design or performance of the LOP instrumentation or electrical power system; nor are there any changes in the method by which safety related plant structures, systems, and components (SSCs) perform their specified safety functions as a result of the proposed license amendment. The proposed change deletes the loss of voltage annunciation requirements and increases the AVs for the degraded voltage protection instrumentation as a result of an electrical power system modification, which [Southern Nuclear Company] SNC has evaluated independently of this proposed license amendment. The proposed license amendment will not affect the normal method of plant operation or revise any operating parameters. Additionally, there is no detrimental impact on the manner in which plant equipment operates or responds to an actuation signal as a result of the proposed license change. No new accident

scenarios, transient precursor, failure mechanisms, or limiting single failures will be introduced as a result of this proposed change and the failure modes and effects analyses of SSCs important to safety are not altered as a result of this proposed change.

The process of operating and testing the LOP instrumentation uses current procedures, methods, and processes already established and currently in use and is not being altered by the proposed license amendment. Therefore, the proposed change does not constitute a new type of test.

With respect to a new or different kind of accident for the increase of the voltage limit in the DG full load rejection surveillance test for the Unit 1 DGs, there are no new DG failure modes created and the DGs are not an initiator of any new or different kind of accident. The proposed increase in the TS SR voltage limit does not affect the interaction of the DGs with any system whose failure or malfunction can initiate an accident. The proposed amendment will not affect the normal method of plant operation or revise any operating parameters. No new accident scenarios, transient precursor, failure mechanisms, or limiting single failures will be introduced as a result of this proposed change and the failure modes and effects analyses of the DGs are not altered as a result of this proposed change.

Accordingly, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

Margin of safety is provided by the performance capability of plant equipment in preventing or mitigating challenges to fission product barriers under postulated operational transient and accident conditions. The proposed license change deletes the loss of voltage annunciation requirements and increases the AVs for the degraded voltage protection instrumentation as a result of an electrical power system modification, which SNC has evaluated independently of this proposed license amendment. The proposed deletion of the loss of voltage annunciation requirements is offset by the more restrictive degraded voltage instrumentation AVs thereby providing an automatic emergency bus transfer to the alternate or emergency power supply in the event of a sustained degraded voltage condition.

The increase in the TS SR voltage limit will not affect the ability of the DGs to perform their safety function. The technical analysis performed to support this amendment demonstrates that this ability will be unaffected and an increase in the TS SR voltage limit will not affect this ability.

Therefore, the margin associated with a design basis or safety limit parameter are not adversely impacted by the proposed amendment and, thus the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.

*NRC Branch Chief:* Michael T. Markley.

*Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia*

*Date of amendment request:* May 17, 2019. A publicly-available version is in ADAMS under Accession No. ML19137A314.

*Description of amendment request:* The amendment proposes changes to the Updated Final Safety Analysis Report (UFSAR) and the Combined License Appendix A, Technical Specifications definition for Channel Calibration to allow a qualitative check (*i.e.,* sensor resistance and insulation resistance tests) as an acceptable means to perform channel calibration for the reactor coolant pump (RCP) speed sensors. An additional change is proposed to the UFSAR to allow the use of a conservatively allocated response time in lieu of measurement for the RCP speed sensors and preamplifiers.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes would revise the licensing basis, including the plant specific Technical Specifications, to allow a qualitative check (*i.e.,* sensor resistance and insulation resistance tests) as an acceptable means to perform channel calibration for the reactor coolant pump (RCP) speed sensors and to allow the use of a conservatively allocated response time in lieu of measurement for the RCP speed sensors and preamplifiers to satisfy the Response Time test Surveillance Requirement.

The proposed changes do not affect the safety limits as described in the plant specific Technical Specifications. In addition, the limiting safety system settings and limiting control settings continue to be met with the proposed changes to the plant-specific Technical Specifications surveillance requirements. The proposed changes do not adversely affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSCs) accident initiator or initiating sequence of events and continue to maintain the initial conditions and operating limits required by the accident analysis, and the analyses of normal operation and anticipated operational occurrences. Therefore, the proposed changes do not result in any increase in probability of an analyzed accident occurring.

The proposed changes do not involve a change to any mitigation sequence or the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not affect the safety limits as described in the plant specific Technical Specifications. In addition, the limiting safety system settings and limiting control settings continue to be met with the proposed changes to the plant-specific Technical Specifications limiting conditions for operation, applicability, actions, and surveillance requirements. The proposed changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident or alter any SSC such that a new accident initiator or initiating sequence of events is created.

These proposed changes do not adversely affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or nonsafety-related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not affect the safety limits as described in the plant specific Technical Specifications. In addition, the limiting safety system settings and limiting control settings continue to be met with the proposed changes to the plant-specific Technical Specifications limiting conditions for operation, applicability, actions, and surveillance requirements. The proposed changes do not affect the initial conditions and operating limits required by the accident analysis, and the analyses of normal operation and anticipated operational occurrences, so that the acceptance limits specified in the UFSAR are not exceeded. The proposed changes satisfy the same safety functions in accordance with the same requirements as stated in the UFSAR. These changes do not adversely affect any design code, function, design analysis, safety

analysis input or result, or design/safety margin.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

*NRC Branch Chief:* Jennifer L. Dixon-Herrity.

*Tennessee Valley Authority (TVA), Docket No. 50–391, Watts Bar Nuclear Plant (WBN), Unit 2, Rhea County, Tennessee*

*Date of amendment request:* February 7, 2019. A publicly-available version is in ADAMS under Accession No. ML19038A483.

*Description of amendment request:* The amendment would revise the technical specifications (TS) to extend, on a one-time basis, the allowed Completion Time (CT) to restore one Essential Raw Cooling Water (ERCW) system train to operable status from 72 hours to 7 days. The change is needed to support performance of maintenance on 6.9 kiloVolt Shutdown Board 1A–A and associated 480 Volt boards and motor control centers. A longer CT under certain plant conditions will allow the necessary flexibility to perform the maintenance with one unit defueled, while minimizing risk to the operating unit.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

*Response:* No.

The proposed change adds a one-time use new Condition A to TS 3.7.8 for WBN Unit 2. The proposed change will extend the allowed completion time to restore ERCW System train to operable status from 72 hours to seven days for planned maintenance when Unit 1 is defueled and UHS [ultimate heat sink] Temperature is less than or equal to 71 °F. This change does not result in any physical changes to plant safety-related structures, systems, or components (SSCs). The UHS and associated ERCW system function is to remove plant system heat loads during normal and accident conditions. As such, the UHS and ERCW system are not design basis accident initiators, but instead perform accident mitigation functions by serving as the heat sink for safety-related equipment to ensure the conditions and assumptions credited in the accident analyses are preserved. During operation under the proposed change with one ERCW train inoperable, the other ERCW train will continue to perform the design function of the ERCW system. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Accordingly, as demonstrated by TVA design heat transfer and flow modeling calculations, operation with one ERCW System inoperable for seven days for planned maintenance when WBN Unit 1 is defueled, the fuel cladding, Reactor Coolant System (RCS) pressure boundary, and containment integrity limits are not challenged during worst-case post-accident conditions. Accordingly, the conclusions of the accident analyses will remain as previously evaluated such that there will be no significant increase in the post-accident dose consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

*Response:* No.

The proposed change does not involve any physical changes to plant safety related SSCs or alter the modes of plant operation in a manner that is outside the bounds of the current UHS and ERCW system design heat transfer and flow modeling analyses. The proposed change adds a one-time use new Condition A to TS 3.7.8, which would extend the allowed completion time to restore ERCW System train to operable status from 72 hours to seven days for planned maintenance when Unit 1 is defueled and UHS Temperature is less than or equal to 71 °F. Therefore, although the specified ERCW System alignments result in reduced heat transfer flow capability, the plant's overall ability to reject heat to the UHS during normal operation, normal shutdown, and hypothetical worst-case accident conditions will not be significantly affected by this proposed change. Because the safety and design requirements continue to be met and the integrity of the RCS pressure boundary is not challenged, no new credible failure mechanisms, malfunctions, or accident initiators are created, and there will be no effect on the accident mitigating systems in a manner that would significantly degrade the plant's response to an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

*Response:* No.

The proposed change adds a one-time use new Condition A to TS 3.7.8, which would extend the allowed completion time to restore ERCW System train to operable status from 72 hours to seven days for planned maintenance when Unit 1 is defueled and UHS Temperature is less than or equal to 71 °F. As demonstrated by TVA design basis heat transfer and flow modeling calculations, the design limits for fuel cladding, RCS pressure boundary, and containment integrity are not exceeded under both normal and post-accident conditions. As required, these calculations include evaluation of the worst-case combination of meteorology and operational parameters, and establish adequate margins to account for measurement and instrument uncertainties. While operating margins have been reduced by the proposed change in order to support necessary maintenance activities, the current limiting design basis accidents remain applicable and the analyses conclusions remain bounding such that the accident safety margins are maintained. Accordingly, the proposed change will not significantly degrade the margin of safety of any SSCs that rely on the UHS and ERCW System for heat removal to perform their safety related functions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

*NRC Branch Chief:* Undine Shoop.

## IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was

published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

*Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of amendment requests:* July 19, 2018.

*Brief description of amendments:* The amendments revised Catawba Nuclear Station, Units 1 and 2 (Catawba), Updated Final Safety Analysis Report (UFSAR), Section 6.2.4.2.2, ''Containment Valve Injection Water System [NW],'' to remove NW supply from specified Containment Isolation Valves (CIVs), and to exempt these CIVs from Type-C Local Leak Rate Testing. Additionally, the amendments would modify UFSAR, Table 6–77, ''Containment Isolation Valve Data,'' to make corresponding changes.

*Date of issuance:* June 17, 2019.

*Effective date:* As of the date of issuance and shall be implemented within 120 days of issuance.

*Amendment Nos.:* 302 (Unit 1) and 298 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19121A551; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the Updated Final Safety Analysis Report.

*Date of initial notice in* ***Federal Register:*** November, 20, 2018 (83 FR 58610).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 2019.

*No significant hazards consideration comments received:* No.

*Entergy Louisiana, LLC, and Entergy Operations, Inc. (Entergy), Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* November 29, 2018.

*Brief description of amendment:* The amendment revised the River Bend Station, Unit 1 Technical Specifications (TSs) to remove the Table of Contents and place it under the licensee's control. The Table of Contents is not eliminated but is no longer in the TSs, and therefore, maintenance and updates are now Entergy's responsibility.

*Date of issuance:* June 19, 2019.

*Effective date:* As of the date of issuance and shall be implemented 90 days from the date of issuance.

*Amendment No.:* 198. A publicly-available version is in ADAMS under Accession No. ML19071A299; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Facility Operating License No. NPF–47:* The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** January 30, 2019 (84 FR 492).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2019.

*No significant hazards consideration comments received:* No.

*Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington*

*Date of amendment request:* June 12, 2018, as supplemented by letter dated August 7, 2018.

*Brief description of amendment:* The amendment revised the renewed facility operating license and the technical specifications, including editorial changes and the removal of obsolete information.

*Date of issuance:* June 20, 2019.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 253. A publicly-available version is in ADAMS under Accession No. ML19063A579; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. NPF–21:* The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** September 11, 2018 (83 FR 45984).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 2019.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi*

*Date of amendment request:* November 3, 2017, as supplemented by letters dated December 6, 2017, January 22, 2018, October 24, 2018, and January 23, 2019.

*Brief description of amendment:* The amendment revised the Grand Gulf Nuclear Station, Unit 1, Updated Final Safety Analysis Report to incorporate the Tornado Missile Risk Evaluator (TMRE) Methodology contained in Nuclear Energy Institute (NEI) 17–02, Revision 1, ''Tornado Missile Risk (TMRE) Industry Guidance Document,'' September 2017. This methodology can only be applied to discovered conditions where tornado missile protection is not currently provided and cannot be used to avoid providing tornado missile protection in the plant modification process.

*Date of issuance:* June 18, 2019.

*Effective date:* As of the date of issuance and shall be implemented 90 days of issuance.

*Amendment No:* 220. A publicly-available version is in ADAMS under Accession No. ML19123A014; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. NPF–29:* The amendment revised the Renewed Facility Operating License.

*Date of initial notice in* ***Federal Register:*** February 27, 2018 (83 FR 8516). The supplemental letters dated October 24, 2018, and January 23, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 2019.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LSCS), Units 1 and 2, LaSalle County, Illinois*

*Date of amendment request:* April 19, 2018, as supplemented by letters dated

April 12, 2019, April 24, 2019, and May 23, 2019.

*Brief description of amendment:* The amendments revised the licenses and the technical specifications (TSs) as follows:

Division 3 Battery Surveillance Testing

The proposed amendments would revise TSs 3.8.4, ''DC Sources-Operating,'' and TS 3.8.6, ''Battery Parameters,'' by removing the Mode restrictions for performance of TS surveillance requirements (SRs) 3.8.4.3 and 3.8.6.6 for the Division 3 direct current (DC) electrical power subsystem battery. The Division 3 DC electrical power subsystem feeds emergency DC loads associated with the high-pressure core spray (HPCS) system. SR 3.8.4.3 verifies that the battery capacity is adequate for the battery to perform its required functions. SR 3.8.6.6 verifies battery capacity is ≥80 percent of the manufacturer's rating when subjected to a performance discharge test (or a modified performance discharge test). The proposed amendments would remove these Mode restrictions for the Division 3 battery, allowing performance of SR 3.8.4.3 and SR 3.8.6.6 for the Division 3 battery during Mode 1 or 2, potentially minimizing impact on HPCS unavailability. Eliminating the requirement to perform SR 3.8.4.3 and SR 3.8.6.6 only during Mode 3, 4, or 5 (hot shutdown, cold shutdown, or refueling conditions) will provide greater flexibility in scheduling Division 3 battery testing activities by allowing the testing to be performed during non-outage times.

High Pressure Core Spray Diesel Generator Surveillance Testing

The proposed amendments would revise TS 3.8.1, ''AC Sources-Operating,'' by revising certain SRs pertaining to the Division 3 diesel generator (DG). The Division 3 DG is an independent source of onsite alternating current (AC) power dedicated to the HPCS system. The TSs currently prohibit performing the testing required by SRs 3.8.1.9, 3.8.1.10, 3.8.1.11, 3.8.1.12, 3.8.1.13, 3.8.1.16, 3.8.1.17, and 3.8.1.19, in Modes 1 or 2. The proposed amendments would remove these Mode restrictions and allow all eight of the identified SRs to be performed in any operating Mode for the Division 3 DG. The Mode restrictions will remain applicable to the other two safety-related (Division 1 and Division 2) DGs.

The proposed change will provide greater flexibility in scheduling Division 3 DG testing activities by allowing the testing to be performed during non-outage times. Having a completely tested Division 3 DG available for the duration of a refueling outage will reduce the number of system re-alignments and operator workload during an outage.

*Date of issuance:* June 24, 2019.

*Effective date:* As of the date of issuance and shall be implemented within 90 days of issuance.

*Amendment No.:* Unit 1—237; Unit 2—223. A publicly-available version is in ADAMS under Accession No. ML19121A505; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–11 and NPF–18:* The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 14, 2018 (83 FR 40348). The supplemental letters dated April 12, 2019, April 24,2019, and May 23, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 24, 2019.

*No significant hazards consideration comments received:* No.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio*

*Date of amendment request:* December 16, 2015, as supplemental letters dated February 2, March 7, July 28, and December 16, 2016; January 17, June 16, and October 9, 2017; April 2, September 11, and November 20, 2018; and May 13, 2019.

*Brief description of amendment:* The amendment revised the Davis-Besse Nuclear Power Station, Unit No. 1, license and technical specifications to establish and maintain a risk-informed, performance-based fire protection program in accordance with 10 CFR 50.48(c).

*Date of issuance:* June 21, 2019.

*Effective date:* As of the date of issuance and shall be implemented in accordance with paragraph 2.C(4) of the license.

*Amendment No.:* 298. A publicly-available version is in ADAMS under Accession No. ML19100A306; documents related to this amendment are listed in the Safely Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. NPF–3:* The amendment revised the renewed facility operating license and technical specifications.

*Date of initial notice in* ***Federal Register:*** April 12, 2016 (81 FR 21599). The supplemental letters dated July 28 and December 16, 2016; January 17, June 16, and October 9, 2017; April 2, September 11, and November 20, 2018; and May 13, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 2019.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of amendment request:* December 19, 2018, as supplemented by letter dated April 30, 2019.

*Brief description of amendments:* The amendments revised the Conditions, Required Actions, and Completion Times in the Technical Specification (TS) for the Condition where one steam supply to the turbine-driven Auxiliary Feedwater (AFW) pump is inoperable concurrent with an inoperable motor-driven AFW train. In addition, the amendments revised the TS that establish specific Actions: (1) For when two motor-driven AFW trains are inoperable at the same time and; (2) for when the turbine-driven AFW train is inoperable either (a) due solely to one inoperable steam supply, or (b) due to reasons other than one inoperable steam supply. The amendments were consistent with U.S. Nuclear Regulatory Commission-approved Technical Specification Task Force (TSTF) Traveler, TSTF–412, Revision 3, ''Provide Actions for One Steam Supply to Turbine Driven AFW/EFW Pump Inoperable.'' The availability of this TSTF improvement was announced in the **Federal Register** on July 17, 2007, as part of the consolidated line item improvement process.

*Date of issuance:* June 24, 2019.

*Effective date:* As of the date of issuance and shall be implemented within 90 days of issuance.

*Amendment Nos.:* 200/183. A publicly-available version is in ADAMS under Accession No. ML19046A088; documents related to these amendments

are listed in the Safety Evaluation enclosed with the amendments.

*Facility Operating License No. NPF–68 and NPF–81:* Amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 12, 2019, (84 FR 8911). The supplemental letter dated April 30, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 2019.

*No significant hazards consideration comments received:* No.

*Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* December 4, 2018.

*Brief description of amendments:* The amendments revised the Susquehanna Steam Electric Station, Units 1 and 2, Technical Specifications to replace the current stored diesel fuel oil numerical volume requirements with duration-based diesel operating time requirements.

*Date of issuance:* June 24, 2019.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 272 (Unit 1) and 254 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19154A060; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–14 and NPF–22:* The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** January 30, 2019 (84 FR 497).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 24, 2019.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 3rd day of July, 2019.

For the Nuclear Regulatory Commission.

**Blake D. Welling,**

*Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2019–14624 Filed 7–15–19; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–440; NRC–2018–0287]**

## FirstEnergy Nuclear Operating Company; Perry Nuclear Power Plant, Unit No. 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License NPF–58 held by FirstEnergy Nuclear Operating Company (FENOC, the licensee) for the operation of Perry Nuclear Power Plant (PNPP), Unit No. 1. The proposed license amendment would revise the emergency response organization (ERO) positions identified in the emergency plan for PNPP. The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed license amendment.

**DATES:** The EA and FONSI referenced in this document are available on July 16, 2019.

**ADDRESSES:** Please refer to Docket ID NRC–2018–0287 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–2018–0287. Address questions about 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 *https://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 Perry Nuclear Power Plant Emergency Plan Amendment Request is available in ADAMS under Accession No. ML18332A500.
- *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:** Kimberly Green, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1627, email: *Kimberly.Green@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The NRC is considering issuance of an amendment to Facility Operating License No. NPF–58 held by FENOC for operation of the PNPP, located in Lake County, Ohio. In accordance with section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC prepared the following EA that analyzes the environmental impacts of the proposed licensing action. Based on the results of this EA, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action and is issuing a FONSI.

### II. Environmental Assessment

*Description of the Proposed Action*

The proposed action would revise the ERO positions identified in the PNPP Emergency Plan to: Transfer rescue and first aid duties from two on-shift security force members to on-shift fire brigade personnel and eliminate two on-shift minimum staff positions that are performed 24 hours a day; reduce the number of radiation monitoring teams (RMTs) from three to two and transfer augmentation staff responsibility for onsite (out-of-plant) surveys from RMTs to radiation protection technicians; add definitions for offsite surveys and onsite (out-of-plant) surveys; and make other administrative changes needed to implement the noted changes above.

The proposed action is in accordance with the licensee's application dated November 28, 2018 (ADAMS Accession No. ML18332A500).

*Need for the Proposed Action*

Nuclear power plant owners, Federal agencies, and State and local officials work together to create a system for emergency preparedness and response that will serve the public in the unlikely event of an emergency. An effective emergency preparedness program decreases the likelihood of an initiating event at a nuclear power reactor proceeding to a severe accident. Emergency preparedness cannot affect the probability of the initiating event,

but a high level of emergency preparedness increases the probability of accident mitigation if the initiating event proceeds beyond the need for initial operator actions.

Each licensee is required to establish an emergency plan to be implemented in the event of an accident, in accordance with 10 CFR 50.47 and appendix E to 10 CFR part 50. The emergency plan covers preparation for evacuation, sheltering, and other actions to protect individuals near plants in the event of an accident.

The NRC, as well as other Federal and State regulatory agencies, reviews emergency plans to ensure that they provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Separate from this EA, the NRC staff is performing a safety assessment of FENOC's proposed changes to the emergency plan for PNPP. This safety review will be documented in a safety evaluation. The safety evaluation will determine whether, with the proposed changes to the emergency plan for PNPP, there continues to be reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at PNPP, in accordance with the standards of 10 CFR 50.47(b) and the requirements in appendix E to 10 CFR part 50.

The proposed action reflects changes in NRC guidance, as well as advances in technologies and best practices, that have occurred since NUREG–0654/FEMA–REP–1, Revision 1, was published in 1980 (ADAMS Accession Nos. ML14163A605 and ML17083A815). The application indicates that FENOC provided the State of Ohio with a copy of the license amendment request, and that the State of Ohio had no concerns.

*Environmental Impacts of the Proposed Action*

The proposed action consists mainly of changes related to the staffing levels and positions specified in the emergency plan for PNPP. The revisions include transfer of responsibilities, elimination of minimum staff positions, reduction in the number of RMTs and transfer of augmentation staff responsibility, addition of definitions for offsite surveys and onsite (out-of-plant) surveys, and other conforming administrative changes.

Regarding potential nonradiological environmental impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents and no changes to the plant's National Pollutant Discharge Elimination System permit would be needed. Changes in staffing levels could result in minor changes in vehicular traffic and associated air pollutant emissions, but no significant changes in ambient air quality would be expected from the proposed changes. In addition, there would be no noticeable effect on socioeconomic and environmental justice conditions in the region, and no potential to affect historic properties. Therefore, there would be no significant nonradiological environmental impacts associated with the proposed action.

Regarding potential radiological environmental impacts, the NRC staff finds that the proposed action would not increase the probability or consequences of any radiological accidents. Additionally, the proposed changes would have no direct radiological environmental impacts. There would be no change to the types or amounts of radioactive effluents that may be released and, therefore, no change in occupational or public radiation exposure. Moreover, no changes would be made to plant buildings or the site property. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC considered the denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental impacts. Accordingly, the environmental impacts of the proposed action and the no-action alternative would be similar.

*Alternative Use of Resources*

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

*Agencies and Persons Consulted*

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. However, in accordance with 10 CFR 50.91, the licensee provided copies of its application to the State of Ohio, and the NRC staff will consult with the State prior to issuance of the amendment.

## III. Finding of No Significant Impact

The licensee has requested a license amendment pursuant to 10 CFR 50.54(q) to revise the PNPP Emergency Plan by transferring staff duties, eliminating staff positions, reducing and transferring staff responsibilities, adding definitions, and making other conforming administrative changes. The license amendment would allow FENOC to revise the PNPP Emergency Plan consisting mainly of changes related to staffing levels and positions specified in the emergency plan for PNPP. The revisions include transfer of responsibilities, elimination of minimum staff positions, reduction in the number of RMTs and transfer of augmentation staff responsibility, addition of definitions for offsite surveys and onsite (out-of-plant) surveys, and other conforming administrative changes.

The NRC is considering issuing the requested amendment. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or nonradiological impacts. It also would not result in any changes to radioactive effluents or emissions to nuclear plant workers and members of the public or any changes to radiological and nonradiological impacts to the environment. The reason the environment would not be significantly affected is because the proposed changes would only result in minor changes in staffing levels and a very small change in air pollutant emissions associated with vehicular traffic.

Consistent with 10 CFR 51.21, the NRC prepared an EA for the proposed action, and this FONSI incorporates by reference the EA in Section II of this document. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined there is no need to prepare an environmental impact statement for the proposed action.

As required by 10 CFR 51.32(a)(5), previous considerations regarding the environmental impacts of operating PNPP, Unit No. 1, in accordance with its operating license, are described in NUREG–0884, ''Final Environmental Statement Related to the Operation of Perry Nuclear Power Plant, Units 1 and 2,'' dated August 1982 (ADAMS Accession No. ML15134A060).

Dated at Rockville, Maryland, this 11th day of July 2019.

For the Nuclear Regulatory Commission.

**Kimberly J. Green,**

*Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2019–15096 Filed 7–15–19; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Submission of Information Collection for OMB Review; Comment Request; Filings for Reconsideration

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information under its regulation on Rules for Administrative Review of Agency Decisions. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

**DATES:** Comments must be submitted by August 15, 2019.

**ADDRESSES:** Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974.

A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulations/information-collections-under-omb-review.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW, Washington, DC 20005–4026; faxing a request to 202–326–4042; or, calling 202–326–4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040). The Disclosure Division will email, fax, or mail the information to you, as you request.

**FOR FURTHER INFORMATION CONTACT:** Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202–326–4400, ext. 3559. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, ext. 3559.

**SUPPLEMENTARY INFORMATION:** PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to reconsideration, which are covered in subpart C of the regulation. Subpart C prescribes rules on who may request reconsideration, when to make a reconsideration request, where to submit the request, the form and content of reconsideration requests, and other matters relating to reconsideration requests.

Any person aggrieved by an initial determination of PBGC under § 4003.1(b)(1) (determinations that a plan is covered by section 4021 of ERISA), § 4003.1(b)(2) (determinations concerning premiums, interest, and late payment penalties under section 4007 of ERISA), § 4003.1(b)(3) (determinations concerning voluntary terminations), § 4003.1(b)(4) (determinations concerning allocation of assets under section 4044 of ERISA), or § 4003.1(b)(5) (determinations with respect to penalties under section 4071 of ERISA) may request reconsideration of the initial determination. Most requests for reconsideration have been filed by plan administrators under § 4003.1(b)(2) for waiver of premium penalties and interest and late payment penalties under section 4007 of ERISA.

Requests for reconsideration must be in writing, be clearly designated as requests for reconsideration, contain a statement of the grounds for reconsideration and the relief sought, and contain or reference all pertinent information. Requests for reconsideration may be filed by hand, mail, commercial delivery service, or electronically.

The existing collection of information was approved under OMB control number 1212–0063 (expires September 30, 2019). On April 29, 2019, PBGC published in the **Federal Register** (at 84 FR 18094) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend approval of this collection of information for three years without change. 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.

PBGC estimates that an average of 184 persons per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is about one-half hour and $652 per person, with an average total annual burden of approximately 100 hours and about $120,000.

Issued in Washington, DC.

**Stephanie Cibinic,**

*Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*

[FR Doc. 2019–15016 Filed 7–15–19; 8:45 am]

**BILLING CODE 7709–02–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*

Form Custody, SEC File No. 270–643, OMB Control No. 3235–0691

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of the extension of the previously approved collection of information provided for in Form Custody (17 CFR 249.639) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Section 17(a)(1) of the Exchange Act provides that broker-dealers registered with the Commission must make and keep records, furnish copies of the records, and make and disseminate reports as the Commission, by rule, prescribes. Pursuant to this authority, the Commission adopted Rule 17a–5 (17 CFR 240.17a–5), which is one of the primary financial and operational reporting rules for broker-dealers.[1] Paragraph (a)(5) of Rule 17a–5 requires every broker-dealer registered with the Commission to file Form Custody (17 CFR 249.639) with its designated examining authority (''DEA'') within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the broker-dealer's annual report if that date is not the end of a calendar quarter. Form Custody is designed to elicit information about whether a broker-

[1] Rule 17a–5 is subject to a separate PRA filing (OMB Control Number 3235–0123).

dealer maintains custody of customer and non-customer assets, and, if so, how such assets are maintained.

The Commission estimates that there are approximately 3,747 broker-dealers registered with the Commission. As noted above, all broker-dealers registered with the Commission are required to file Form Custody with their DEA once each calendar quarter. Based on staff experience, the Commission estimates that, on average, it would take a broker-dealer approximately 12 hours to complete and file Form Custody, for an annual industry-wide reporting burden of approximately 179,856 hours.[2] Assuming an average cost per hour of approximately $314 for a compliance manager, the total internal cost of compliance for the respondents is approximately $56,474,784 per year.[3]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: Abate, Lindsay M., EOP/OMB, *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: July 11, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15047 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

[2] 3,747 brokers-dealers × 4 times per year × 12 hours = 179,856 hours.

[3] 179,856 hours times $314 per hour = $56,474,784. $314 per hour for a compliance manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff for an 1,800-hour work-year, multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and adjusted for inflation.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86340; File No. SR–ICEEU–2019–014]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe CDS Default Management Framework (the "Framework")

July 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2019, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to revise its CDS Default Management Framework (the ''Framework'') to make certain updates and enhancements, including changes to be consistent with amendments proposed to the ICE Clear Europe Clearing Rules (the ''Rules'') to address default management, recovery and wind-down for the CDS Contract Category. The revisions would not involve any changes to the ICE Clear Europe Rules or Procedures. The revisions do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.[3]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICE Clear Europe is proposing to adopt the amendments to the Framework in order to ensure that the Framework remains consistent with the Rules in light of the proposed Recovery Rule Amendments to address default management, recovery and wind-down for the CDS Contract Category. Consistent with the Recovery Rule Amendments, the proposed changes to the Framework primarily relate to implementation of auction procedures, reduced gains distribution, partial contract tear-up, Clearing Member withdrawal and termination, clearing service termination and the role of the CDS Default Committee, CDS Risk Committee and Board during a default event. The proposed amendments would also include certain other enhancements and clarifications.

(I) Overall Framework

The amendments clarify the overall purposes and content of the Framework, to include explicitly the porting of client positions and assets, conducting auctions and associated processes, implementing reduced gain distributions, calls for assessments from Clearing Members and partial tear-up of positions.

(II) Auction Procedures

Several aspects of the Framework addressing default auctions would be amended in light of the Recovery Rule Amendments, which would adopt a new set of CDS initial and secondary auction procedures (the ''Proposed Auction Procedures''):

- The amendments would clarify that in determining the auction portfolios, the Clearing House would consider wrong-way risk to non-defaulting Clearing Members, among other listed factors;
- The amendments would clarify that upon completion of the auction, submission of resulting trade to the Trade Information Warehouse would be done under normal Clearing House practices;
- Clearing Members would no longer be required to confirm to the Default Management Committee their intention to bid in a particular auction (in light of the mandatory bidding requirements of under the Proposed Auction Procedures);
- Consistent with the Proposed Auction Procedures, the Framework

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the ''Rules'').

would no longer provide that the last bid submitted by the Clearing Member is the only bid considered once the bidding window is closed;

• The amendments would set a range for the minimum bid requirement for Clearing Members, consistent with the Proposed Auction Procedures. The Framework provides examples of the calculation of the minimum bid requirement for Clearing Members, based on their respective CDS Guaranty Fund contributions as compared to the total CDS Guaranty Fund size;

• The Framework also provides several examples of the modified Dutch auction methodology used under the Proposed Auction Procedures;

• The Framework would reflect the two means by which Customers would be able to participate in auctions under the Proposed Auction Procedures: (i) Via Clearing Member following mutual agreement on participation terms; and (ii) via direct participation following (subject to Customer contribution of €7.5 million to default resources (in the case of initial auctions) and certain other requirements);

• The Framework also summarizes key distinctions between initial auctions and secondary auctions under the Proposed Auction Procedures;

• The existing Clearing House approach to non-competitive bids would be deleted, in light of the three tier methodology approach to juniorization of the Guaranty Fund contribution provided for in the Recovery Rule Amendments;

• The existing auction schedule in the Framework would be removed, as it would be superseded by the Proposed Auction Procedures; and

• The provisions in the existing Framework for forced portfolio allocation for positions for which ICE Clear Europe does not receive a formal bid from any Non-Defaulting Clearing Members would be removed, consistent with the Recovery Rule Amendments.

(III) Reduced Gains Distribution

The amendments would add a new section to the framework that describes the use of reduced gains distribution (''RGD'') as a recovery tool that the Clearing House could use in the event that its remaining default resources are insufficient to ensure solvency. The Framework incorporates and summarizes key aspects of the Recovery Rule Amendments relating to the use of RGD, including the methodology for applying RGD to both the house and customer accounts and the five consecutive business day limitation on the use of RGD (following which partial tear-up may be conducted). The Framework also provides examples of the use of RGD.

(IV) Clearing Member Withdrawal

The proposed amendments to the Framework reflect the procedures for Clearing Member withdrawal as set out in the Recovery Rule Amendments, including both an ordinary course of business termination outside of a default and termination during a cooling off period.

(V) Partial Tear-Up

The revised Framework would reflect the Recovery Rule Amendments that permit the Clearing House to proceed to partial tear-up as a final default tool where the Clearing House is unable to close out all of the defaulter's remaining positions through auctions within the Clearing House's remaining resources. In a partial tear-up, the Clearing House would terminate positions of non-defaulting Clearing Members that exactly offset those in the defaulting Clearing Member's remaining portfolio (''Tear-Up Positions''), in accordance with the Recovery Rule Amendments. This would be done across both house and customer accounts of all non-defaulting Clearing Members in accordance with the Rules. The Framework would also describe procedures for the timing of partial tear-up and determination of the relevant termination price, in accordance with the Recovery Rule Amendments.

(VI) Clearing Service Termination

The amended Framework would also reflect the Clearing House's ability, under Rule 916 as proposed to be modified by the Recovery Rule Amendments, to terminate the CDS clearing service under specified circumstances.

(VII) Role of the CDS Risk Committee During a Default Event

Pursuant to the proposed amendments, the CDS Risk Committee would be consulted on (i) establishing the terms of initial and secondary auctions (including defining different auction lots) and (ii) holding additional auctions and/or accepting a partial fill of an auction during the initial auction phase. The CDS Risk Committee would be consulted, with the ultimate decision to be made by the ICE Clear Europe Board (or their delegate), with respect to the following matters under the Rules:

• Whether to use CDS Guaranty Fund contributions of non-defaulting Clearing Members to cover the cost of a direct liquidation outside of a default auction;

• Whether to determine that an initial default auction has failed due to insufficient default resources;

• Whether to invoke and/or continue RGD;

• Whether to hold a secondary auction, whether that auction has failed and in the event of failure, whether to hold additional secondary auctions;

• In a secondary auction, whether to reallocate default resources to a particular lot to permit a successful auction of that lot;

• In a final secondary auction, whether to accept a ''partial fill'' to the extent of available default resources for the relevant lot;

• Whether to implement a partial tear-up;

• Whether to terminate the clearing service in full; and

• Whether to bypass an initial default auction or bypass secondary default management action(s).

(VIII) Additional Amendments

The proposed amendments would include certain other clarifying and conforming changes and typographical corrections. In addition, the proposed amendments would remove as unnecessary a provision that hedging traders are responsible for ensuring all hedge trades are correctly reflected in the trade capture system by end of day (as the Clearing House is responsible for such matters in accordance with its current practices). Certain unnecessary details about computer support for CDS Default Committee Members would be removed. An outdated trade workflow chart would also be removed. With respect to liquidation of a defaulting Clearing Member's collateral, the amendments would clarify that the Head of Clearing Risk may postpone the collateral sale without seeking advice of the CDS Default Committee, which is consistent with current practice. The amendments would also clarify that the risk team also consults with the CDS Default Committee with respect to establishing hedging positions with the non-defaulting Clearing Members, in addition to the Head of Clearing Risk. Certain parts of Appendix A, including an itemized example of auction position data and a standard bidding template, as well as references thereto throughout the framework would be removed.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [4] and the regulations thereunder

[4] 15 U.S.C. 78q–1.

applicable to it, including the standards under Rule 17Ad–22.[5] In particular, Section 17A(b)(3)(F) of the Act requires that that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest.[6] As discussed herein, the proposed rule changes are principally designed to conform the Framework to the provisions of the proposed Recovery Rule Amendments, which address the risks posed to ICE Clear Europe by a significant default by one or more Clearing Members.[7] The proposed amendments add to the Framework internal procedures and processes for using the additional default tools that would be made available by the Recovery Rule Amendments, including initial and secondary CDS auction procedures, RGD and partial tear-up. These tools are designed to permit ICE Clear Europe to restore a matched book and limit its exposure to potential losses from a CDS Clearing Member default in extreme scenarios that may not be able to be addressed by standard risk management and default procedures. The amendments would also reflect in the Framework the updated procedures for CDS Clearing Members to withdraw from the Clearing House, as proposed in the Recovery Rule Amendments. The amendments would also describe the procedures for full CDS clearing service termination, which would be a tool to address general business risk, operational risk and other risks that may otherwise threaten the viability of the Clearing House. The amendments also clarify certain governance arrangements during a default event, by specifying the circumstances in which the CDS Risk Committee would be consulted with respect to key decisions involving the use of recovery tools.

The amendments to the Framework would thus enhance the ability of the Clearing House to deal with significant loss events, and in turn further prompt and accurate clearance and settlement of cleared transactions and the public interest in the continued operation of the clearing system in light of such events. Through increasing the ability of ICE Clear Europe to withstand and recover from extreme loss events, the amendments may also enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, and avoid disruption of access to such assets.

The amendments would also satisfy the relevant specific requirements of Rule 17Ad–22,[8] as set forth in the following discussion:

*Default Procedures.* Rule 17Ad–22(e)(13)[9] requires the covered clearing agency to ensure that it ''has the authority and operational capacity to take timely action to contain losses and liquidity demands'' in the case of default. The proposed amendments would enhance ICE Clear Europe's internal procedures to implement to the Recovery Rule Amendments. The amendments will facilitate use of the new default management and recovery tools included in the Recovery Rule Amendments, including the new procedures for CDS auctions, juniorization of Guaranty Fund and assessment contributions in the context of auctions, procedures for secondary auctions, RGD, and the option to invoke a partial tear-up of positions to restore a matched book in the event that it would be unable to auction the defaulter's remaining portfolio. ICE Clear Europe believes that this revised set of tools would strengthen the Clearing House's ability to efficiently, fairly and safely manage extreme default events. The amendments thus are designed, in conjunction with the Recovery Rule Amendments, to permit ICE Clear Europe to fully allocate losses arising from default by one or more Clearing Members, with the goal of permitting the Clearing House to resume normal operations. As a result, in ICE Clear Europe's view, the amendments would allow it to take timely action to contain losses and liquidity pressures, within the meaning of Rule 17Ad–22(e).

*Governance.* Rule 17Ad–22(e)(2)[10] requires that a covered clearing agency provide for governance arrangements that, among other matters, are ''clear and transparent,'' ''clearly prioritize the safety and efficiency of the covered clearing agency,'' and ''specify clear and direct lines of responsibility.'' ICE Clear Europe believes that the proposed amendments to the Framework provide further clarity as the governance process for default management and recovery, consistent with these standards. Specifically, the amendments would address the circumstances in which the CDS Risk Committee would be consulted on key decisions involving the use of recovery tools. The amendments also clarify that key decisions will ultimately be made by the ICE Clear Europe Board (or its delegate). ICE Clear Europe believes that the amendments would thus specify appropriate lines of responsibility and involvement of the CDS Risk Committee and Board, in furtherance of the safety and efficiency of ICE Clear Europe in a default scenario.

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments would apply uniformly to all CDS Clearing Members (and customers of Clearing Members). The amendments are intended to provide additional implementing procedures and governance relating to the use of the default management and recovery tools in the Recovery Rule Amendments, which are designed to address the risk of extreme loss events. As a result, ICE Clear Europe does not anticipate that the amendment would affect the day-to-day operation of the Clearing House under normal circumstances. ICE Clear Europe does not believe the amendments would adversely affect the ability of Clearing Members or other market Clearing Members to continue to clear contracts, including CDS Contracts. ICE Clear Europe also does not believe the enhancements would limit the availability of clearing in CDS or other products for Clearing Members or their customers or otherwise limit market Clearing Members' choices for selecting clearing services in CDS and other products. As with the Recovery Rule Amendments more generally, in the case of an extreme default scenario, the application of the Framework in the conduct of default management could impose certain costs and loses on Clearing Members or their customers, as well as ICE Clear Europe. ICE Clear Europe believes that this potential result is consistent with the Rules and is appropriate in light of the default management goals of the Clearing House, the goal of promoting orderly recovery of the Clearing House and the broader public interest in the ability of the clearing system to withstand default events. As a result, ICE Clear Europe does not believe that the proposed amendments impose any burden on

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] For a discussion of the statutory basis of the Recovery Rule Amendments themselves, see Exchange Act Release No. 34–85848, SR–ICEEU 2019–003.

[8] 17 CFR 240.17Ad–22.

[9] 17 CFR 240.17Ad–22(e)(13).

[10] 17 CFR 240.17Ad–22(e)(2).

competition that is not appropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2019–014 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–ICEEU–2019–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2019–014 and should be submitted on or before August 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15022 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86346; File No. SR–GEMX–2019–08]**

## Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell

July 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2019, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to relocate rules from its current Rulebook into its new Rulebook.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule change is to relocate GEMX rules into the new Rulebook shell with some amendments to the shell.[3] Nasdaq ISE, LLC (''ISE'') recently relocated its rules.[4] GEMX proposes relocate its rules so the Rulebook is similar to ISE. The other Nasdaq affiliated markets will also relocate their Rulebooks in order to harmonize its rules, where applicable, across Nasdaq markets. The relocation and harmonization of the GEMX Rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules with those of its Affiliated Exchanges. The Exchange believes that the placement of the GEMX Rules into their new location in

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Previously, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, Nasdaq BX, Inc.; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; ISE; and Nasdaq MRX, LLC (''Affiliated Exchanges''). The shell structure currently contains eight (8) Chapters which, once complete, will apply a common set of rules to the Affiliated Exchanges.

[4] *See* SR–ISE–2019–17 (not yet published).

the shell will facilitate the use of the Rulebook by Members and Members of Affiliated Exchanges.

Universal Changes

The Exchange proposes to amend the defined term ''System'' [5] and replace ''trading system'' or ''system'' with the defined term throughout the new rules. The Exchange proposes to capitalize the defined term ''market maker'' within proposed Options 1, Section 1(a)(20) and also capitalize the term throughout the Rulebook. The Exchange proposes to capitalize the defined term ''Member'' [6] throughout the new rules where it is not already capitalized. The Exchange proposes to capitalize the ''t'' in the defined term ''Exchange Transactions'' [7] where the term is not properly capitalized within the Rules. The Exchange proposes to change references to ''Commentary'' to ''Supplementary Material'' to conform the term throughout the Rulebook. References to the term ''Regulatory Information Circular'' or ''circular'' are being amended to the updated term ''Options Regulatory Alert.''

The Exchange proposes to update all cross-references within the Rule to the new relocated rule cites. The Exchange proposes to replace internal rule references to simply state ''this Rule'' where the rule is citing itself without a more specific cite included in the Rule. For example, if GEMX Rule 715 refers currently to ''Rule 715'' or ''this Rule 715'' the Exchange will amend the phrase to simply ''this Rule.'' The Exchange proposes to conform numbering and lettering in certain rules to the remainder of the Rulebook. Finally, the Exchange proposes to delete any current Rules that are reserved in the Rulebook.

General 1

The Exchange proposes to relocate certain definitions from Rule 100 into proposed General 1, Section 1 and the remainder of the rules into Options 1, Section 1. The Exchange proposes to relocate definitions that are specific to the options product into Options 1, Section 1 and the more general definitions will be relocated into the General provisions.[8]

General 2

The Exchange will not relocate GEMX Rules 200–203 into General 2 Organization and Administration. The Exchange will separately file a proposed rule change to delete these rules. General 2 would be comprised of the following rules:

| Proposed new rule No. | Current rule No. |
|---|---|
| Section 1 | Rule 204. Divisions of the Exchange. |
| Section 2 | Rule 205. Participant Fees (renamed Fees, Dues and Other Charges). |
| Section 3 | Rule 207. Exchange's Costs of Defending Legal Proceedings. |
| Section 4 | Rule 309. Limitation on Affiliation between the Exchange and Members. |

Rule 208, Sales Value Fee, will be relocated into Options 7. The Exchange intends to locate similar rules within other Nasdaq Rulebooks in similar locations when it files to relocate other Affiliate Exchange Rulebooks in separate rule changes. The Exchange proposes to reserve Sections 5 and 6 within General 2.

General 3

The Exchange proposes to relocate the following rules into General 3, ''Membership and Access.''

| Proposed new rule No. | Current rule No. |
|---|---|
| Section 1 | Rule 300. Membership/Rule 301. Qualification of Members (combined into one rule). |
| Section 2 | Rule 303. Denial of and Conditions to Becoming a Member. |
| Section 3 | Rule 305. Persons Associated with Members. |
| Section 4 | Rule 307. Documents Required of Applicants and Members. |
| Section 5 | Rule 302. Member Application Procedures. |
| Section 6 | Rule 308. Dissolution and Liquidation of Members. |

General 5

The Exchange proposes to relocate the following rules into General 5 Discipline:

| Proposed new rule No. | Current rule No. |
|---|---|
| Section 1 | 16. Disciplinary Jurisdiction. |
| Section 2 | 80. Investigations and Sanctions. |
| Section 3 | 90. Code of Procedure. |

The Exchange proposes to note the rule text contained within Chapter 16 within General 5, Section 1 and also replicate that text within Options 11, Section 1 as Jurisdiction and Minor Rule Plan Violations are combined currently in Chapter 16 currently.

Options 1

The Exchange proposes to rename current Options 1 from ''Options Definitions'' to ''General Provisions.''

[5] The term ''System'' is defined at Rule 100(a)(64).

[6] The term ''Member'' is defined at Rule 100(a)(31).

[7] The term ''Exchange Transactions'' is defined at Rule 100(a)(23).

[8] These rules are being relocated into Section 1 of the General Provisions: Chapter I (a)(4), (7), (10), (11) (14A), (19), (21), (21A), (23), (25), (26), (27), (31), (32), (49), (58), (59), (63) and (67).

The Exchange proposes to relocate certain definitions from Rule 100 into proposed General 1, Section 1 and the remainder of the rules into Options 1, Section 1. The Exchange proposes to relocate definitions that are specific to the options product into Options 1, Section 1. Section 2 of Options 1 is being reserved.

Options 2

The Exchange proposes to rename Options 2 from ''Options Trading Rules'' to ''Options Market Participants'' and relocate the following rules into this chapter:

| Proposed new rule No. | Current rule No. |
|---|---|
| Section 1 | Rule 800. Registration of Market Makers. |
| Section 2 | Rule 801. Designated Trading Representatives. |
| Section 3 | Rule 802. Appointment of Market Makers. |
| Section 4 | Rule 803. Obligations of Market Makers. |
| Section 5 | Rule 804. Market Maker Quotations except 804(h) which will be relocated into Options 3. |
| Section 6 | Rule 805. Market Maker Orders. |
| Section 7 | Rule 807. Securities Accounts and Orders of Market Makers. |
| Section 8 | Rule 809. Financial Requirements for Market Makers. |

Sections 9 and 10 will be reserved. Rule 802 references to foreign currency options were not included in the relocated rule because Chapter 22 does not exist in the Rulebook.

Options 2A

The Exchange proposes a new Options Section 2A titled ''GEMX Market Maker Rights'' and proposes to relocate Rule 304, ''Approval to Operate Multiple Memberships'' into new Section 2. The Exchange proposes to reserve Section 1.

Options 3

The Exchange proposes to rename Options 3 from ''Options Market Participants'' to ''Options Trading Rules'' and relocate the following rules into this chapter:

| Proposed new rule No. | Current rule No. |
|---|---|
| Section 1 | Rule 700. Days and Hours of Business. |
| Section 2 | Rule 708. Units of Trading/Rule 709. Meaning of Premium Quotes and Orders (combined into one rule). |
| Section 3 | Rule 710. Minimum Trading Increments. |
| Section 4 | Rule 711. Acceptance of Quotes and Orders, except (c) and (d). |
| Section 5 | Reserved. |
| Section 6 | Rule 704. Collection and Dissemination of Quotations. |
| Section 7 | Rule 715. Types of Orders. |
| Section 8 | Rule 701. Opening. |
| Section 9 | Rule 702. Trading Halts/Rule 703. Trading Halts Due To Extraordinary Market Volatility. |
| Section 10 | Rule 713. Priority of Quotes and Orders. |
| Section 11 | Rule 716. Auction Mechanisms. |
| Section 12 | Rule 721. Crossing Orders. |
| Section 13 | Rule 723. Price Improvement Mechanism for Crossing Transactions. |
| Section 14 | Reserved. |
| Section 15 | Rule 714. Automatic Execution of Orders (renamed Simple Order Risk Protections). |
| Section 16 | Reserved. |
| Section 17 | Kill Switch (relocating 711(c)). |
| Section 18 | Detection of Loss of Communication (relocating 711(d)). |
| Section 19 | Reserved. |
| Section 20 | Rule 720. Nullification and Adjustment of Options Transactions including Obvious Errors/Rule 720A. Erroneous Trades due to System Disruptions and Malfunctions (combined into one rule). |
| Section 21 | Rule 706. Access to and Conduct on the Exchange. |
| Section 22 | Rule 717. Limitations on Orders. |
| Section 23 | Rule 718. Data Feeds and Trade Information. |
| Section 24 | Rule 719. Transaction Price Binding. |
| Section 25 | Reserved. |
| Section 26 | Message Traffic Mitigation (relocating Rule 804(h). |
| Section 27 | Rule 705. Limitation of Liability. |

The Exchange proposes to combine GEMX Rules 708 and 709 within Section 2.[9] GEMX Rule 714 is being relocated into Options 3, Section 15 and is being renamed from ''Automatic Execution of Orders'' to ''Simple Order Risk Protections.'' GEMX Rules 702 and 703 are being combined into Section 9. The Exchange proposes to combine GEMX Rules 720 and 720A into Section 20.[10] The Exchange proposes to relocate GEMX Rule 711(c) and (d) into new separate Rules at Sections 17 and 18.

The Exchange proposes to create a separate rule in Section 26 relocated from Rule 804(h) and title the rule ''Message Traffic Mitigation.''

Options 4

The Exchange proposes to relocate rules from GEMX Chapter 5 which incorporates those Rules by reference to

[9] The Exchange is not proposing any substantive changes in consolidating these rules.

[10] *Id.*

Nasdaq ISE, LLC (''ISE'') Chapter 5, within Options 4 Options Listing Rules.

Options 4A

The Exchange proposes to relocate rules from GEMX Chapter 20 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 20, within new proposed Options 4A, which is proposed to be titled ''Options Index Rules.''

Options 5

The Exchange proposes to relocate rules from GEMX Chapter 19 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 19, within Options 5. The Exchange also proposes to rename Options 5 from ''Options Trade Administration'' to ''Order Protections and Locked and Crossed Markets.''

Options 6

The Exchange proposes to rename Options 6 from ''Order Protections and Locked and Cross Markets'' to ''Options Trade Administration'' and relocate rules within Options 6 as follows:

| Proposed new rule No. | Current rule No. |
|---|---|
| Section 1 | Rule 707. Authorization to Give Up. |
| Section 2 | Rule 712. Submission of Orders and Clearance of Transactions. |
| Section 3 | Rule 806. Trade Reporting and Comparison. |
| Section 4 | Rule 808. Letters of Guarantee. |

Options 6A

The Exchange proposes to relocate rules from GEMX Chapter 10 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 10, within Options 6A. The Exchange proposes to title Options 6A as ''Closing Transactions.''

Options 6B

The Exchange proposes to relocate rules from GEMX Chapter 11 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 11, within Options 6B. The Exchange proposes to title Options 6B as ''Exercises and Deliveries.''

Options 6C

The Exchange proposes to relocate rules from GEMX Chapter 12 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 12, within Options 6B. The Exchange proposes to title Options 6C as ''Margins.''

Options 6D

The Exchange proposes to relocate rules from GEMX Chapter 13 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 13, within Options 6D. The Exchange proposes to title Options 6D as ''Net Capital Requirements.''

Options 6E

The Exchange proposes to relocate rules from GEMX Chapter 14 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 14, within Options 6D. The Exchange proposes to title Options 6E as ''Records, Reports and Audits.''

Options 7

The Exchange proposes to relocate Rule 208 titled ''Sales Value Fee'' to Options 7, Options Pricing at new proposed Section 8.

Options 9

The Exchange proposes to relocate rules from GEMX Chapter 4 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 4, within Options 9. The Exchange proposes to title Options 9 as ''Business Conduct.''

Options 10

The Exchange proposes to relocate rules from GEMX Chapter 6 which incorporates those Rules by reference to Nasdaq ISE, LLC (''ISE'') Chapter 6, within Options 10. The Exchange proposes to title Options 10 as ''Doing Business with the Public.''

Options 11

The Exchange proposes to note the rule text contained within Chapter 16 within Options 11, Section 1 as Jurisdiction and Minor Rule Plan Violations and also replicate that rule text within General 5, Section 1. The text is currently combined in Chapter 16. The Exchange proposes to title Options 11 as ''Minor Rule Plan Violations.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by relocating its Rules into the new Rulebook shell together with other rules which have already been relocated. The Exchange's proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules, where applicable, across Nasdaq markets so that Members can readily locate rules which cover similar topics. The relocation and harmonization of the GEMX Rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules with those of its Affiliated Exchanges. The Exchange believes that the placement of the GEMX Rules into their new location in the shell will facilitate the use of the Rulebook by Members. Specifically, the Exchange believes that market participants that are members of more than one Nasdaq market will benefit from the ability to compare Rulebooks.

The Exchange is not substantively amending rule text unless noted otherwise within this rule change. The renumbering, re-lettering, deleting reserved rules, amending cross-references and other minor technical changes will bring greater transparency to GEMX's Rules. The Exchange intends to file other rule changes to relocate Affiliated Exchange Rulebooks to corresponding rules into the same location in each Rulebook for ease of reference. The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook and promoting easy comparisons among the various Nasdaq Rulebooks.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to relocate the Rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules. Renumbering, re-lettering, deleting reserved rules and

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

amending cross-references will bring greater transparency to GEMX's Rules.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. As the proposed rule change raises no novel issues and is largely organizational, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–GEMX–2019–08 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–GEMX–2019–08. 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–GEMX–2019–08, and should be submitted on or before August 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15028 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86343; File No. SR–PEARL–2019–21]**

## Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

July 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The Exchange previously filed the proposal on April 30, 2019 (SR–PEARL–2019–17). That filing has been withdrawn and replaced with the current filing (SR–PEARL–2019–21).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''). These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[4] The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.[5] The Commission received one comment letter on the proposal.[6] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission on September 17, 2018.[7] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.[9] The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.[10] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.[11] The Commission received one comment letter on the proposal.[12] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'') issued by the Commission on October 3, 2018.[13] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.[14]

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are reasonable. On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.[15]

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.[16] The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[17] The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[18] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.[19]

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 83785 (August 7, 2018), 83 FR 40101 (August 13, 2018) (SR–PEARL–2018–16) (the ''First Proposed Rule Change'').

[5] *Id.*

[6] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[7] *See* Securities Exchange Act Release No. 34–84177 (September 17, 2018).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 84397 (October 10, 2018), 83 FR 52272 (October 16, 2018) (SR–PEARL–2018–16).

[10] *See* Securities Exchange Act Release No. 84358 (October 3, 2018), 83 FR 51022 (October 10, 2018) (SR–PEARL–2018–19) (the ''Second Proposed Rule Change'').

[11] *Id.*

[12] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (''SIFMA Letter'').

[13] *See supra* note 10.

[14] *Id.*

[15] *See* Securities Exchange Act Release No. 84651 (November 26, 2018), 83 FR 61687 (November 30, 2018) (SR–PEARL–2018–19).

[16] *See* Securities Exchange Act Release No. 85317 (March 14, 2019), 84 FR 10380 (March 20, 2019) (SR–PEARL–2019–08) (the ''Third Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule).

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[19] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [20] The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[21]

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.[22]

The Exchange refiled the Proposed Fee Increases on April 30, 2019, designating the Proposed Fee Increases immediately effective.[23] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[24] The Fourth Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees (the ''Guidance'').[25]

The Commission received two comment letters on the Fourth Proposed Rule Change, after the Guidance was released.[26] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Fourth Proposed Rule Change to justify the Proposed Fee Increases based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Fourth Proposed Rule Change. Also, Healthy Markets did not comment on the Fourth Proposed Rule Change.

The Exchange is now re-filing the Proposed Fee Increases (the ''Fifth Proposed Rule Change'') to bolster its cost-based discussion to support its claim that the Proposed Fee Increases are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit, in light of the Guidance issued by Commission staff subsequent to the Fourth Proposed Rule Change. The Exchange believes that the Proposed Fee Increases are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are, as demonstrated in the Fifth Proposed Rule Change and supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are, as demonstrated in the Fifth Proposed Rule Change and supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market

LLC, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

[20] *See* IEX Letter, pg. 1.

[21] *See* Second Healthy Markets Letter, pg. 2.

[22] *See* SR–PEARL–2019–08.

[23] *See* Securities Exchange Act Release No. 85837 (May 10, 2019), 84 FR 22214 (May 16, 2019) (SR–PEARL–2019–17) (the ''Fourth Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule).

[24] *Id.*

[25] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[26] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

data systems, test systems and disaster recovery facilities of the Exchange and MIAX via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [27] in general, and furthers the objectives of Section 6(b)(4) of the Act [28] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [29] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [30]

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX PEARL. Further, of the number of Members that connect directly to MIAX PEARL, many such Members do not purchase market data from MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. For example, the following are not Members of MIAX PEARL: The D.E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX PEARL, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity that market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX PEARL or its affiliates, MIAX and MIAX Emerald, they do not purchase connectivity to MIAX PEARL, and they do not purchase market data from MIAX PEARL. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX PEARL, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[31] The

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(4).

[29] 15 U.S.C. 78f(b)(5).

[30] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[31] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-*

decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX PEARL notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAX PEARL and its affiliates. MIAX PEARL competes with nine (9) non-Members who resell MIAX PEARL connectivity. These are resellers of MIAX PEARL connectivity—they are not arrangements between broker-dealers to share connectivity costs, as SIFMA suggests. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX PEARL (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX PEARL does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX PEARL to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX PEARL and/or MIAX. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX PEARL and/or MIAX. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX PEARL, constraining the price that MIAX PEARL is able to charge for connectivity to its Exchange.

*files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

The Exchange [32] and MIAX [33] are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX PEARL, MIAX, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX, or both, with the exception of one new Member who is currently in the on-boarding process. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX PEARL recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Thus, the value of the 1Gb alternative is much lower than value of a 10Gb alternative, when measured based on the type of Exchange access it offers, which is the basis for difference in price between a 1Gb connection and a 10Gb connection. Approximately just less than half of MIAX PEARL and MIAX Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases ($9,300 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the network resources consumed by the market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative.

With respect to options trading, the Exchange had only 4.84% market share of the U.S. options industry in Equity/ETF classes according to the OCC in May 2019.[34] For May of 2019, the Exchange's affiliate, MIAX, had only 3.75% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[35] For May 2019, the Exchange's affiliate, MIAX Emerald, had only 0.77% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[36] The Exchange is aware of no evidence that a combined market share of less than 10% provides the Exchange with anti-competitive

[32] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members/pearl.*

[33] MIAX has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members.*

[34] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[35] *Id.*

[36] *Id.*

pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX PEARL must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 41 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[37] Nasdaq ISE, LLC has approximately 100 members,[38] and NYSE American LLC has over 80 members.[39] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 41 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018. In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX PEARL and MIAX; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.[40] Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options. MIAX PEARL did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges, demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the different levels of service provided and the largest percentage increase being associated with the lowest cost connection. Further, the Exchange believes that the fees are reasonably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange's network. It is these firms that account that also account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 80% of the volume on the Exchange. For example, in June of 2019, to date, approximately 11.3 million contracts of the approximately 13.6 million

[37] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[38] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[39] *See https://www.nyse.com/markets/american-options/membership#directory.*

[40] The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

contracts executed were done by the top market making firms of the Exchange's total volume. The Exchange considered whether to increase transaction fees and other fees in order to offset its costs as an alternative to increasing connectivity fees, however, the Exchange determined that increasing its connectivity fees was the only viable alternative. This is because the increased costs are more closely associated with connectivity, as well as the intense level of competition among the options exchanges for order flow through transaction fees.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit. The Proposed Fee Increases will allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure to support this technology since Exchange launched operations in February 2017. Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development (''R&D'') efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to the expanding its Information Security services, network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since became operational in February 2017. Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX PEARL and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX PEARL and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, cost to MIAX PEARL and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX PEARL and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million. These costs have increased over 10% since the Exchange became operational in February 2017. As these network connectivity-related expenses increase, MIAX PEARL and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the expense increases since February 2017 include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee increased cost, this is the cost associated with MIAX PEARL consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX PEARL to effectively pay its competitors for this connectivity. While the Exchange and MIAX have incurred a total increase in connectivity expenses since January 2017 (the last time connectivity fees were raised) of approximately $1.5 million per year (as described above), the total increase in connectivity revenue amount as a result of the Proposed Fee Increases is projected to be approximately $1.2 million per year for MIAX PEARL and MIAX. Accordingly, the total projected MIAX PEARL and MIAX connectivity revenue as a result of the proposed increase, on an annualized basis, is less than total annual actual MIAX PEARL and MIAX connectivity expense. Accordingly, the Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the increase in actual costs to the Exchange (since February 2017) versus the projected increase in annual revenue. The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the

Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since February 2017.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 audited financial statements which will be publicly available as part of the Exchange's Form 1 Amendment, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the total annual expense of the Exchange associated with providing the network connectivity services versus the total projected annual revenue of the Exchange associated with providing the network connectivity services. For 2018, the annual expense associated with providing the network connectivity services (that is, the shared network connectivity of MIAX PEARL and MIAX, but excluding MIAX Emerald) was approximately $20.8 million. This amount is comprised of both direct and indirect expense. The direct expense (which relates 100% to the network infrastructure, associated data center processing equipment required to support various connections, network monitoring systems and associated software required to support the various forms of connectivity) was approximately $8.5 million (constituting primarily Information Technology expense in the Exchange's 2018 financial statements). The indirect expense (which includes expense from such areas as trading operations, software development, business development, information technology, marketing, human resources, legal and regulatory, finance and accounting) that the Exchange allocates to the maintenance and support of network connectivity services was approximately $12.3 million. This indirect expense amount of $12.3 million represents approximately 20% of the total annual expense of MIAX PEARL and MIAX for 2018 of approximately $70 million, less direct expense of $8.5 million ($70 million less $8.5 million equals $61.5 million multiplied by 20% equals $12.3 million). Total projected annualized revenue of the Exchange associated with selling the network connectivity services (reflecting the Proposed Fee Increases on a fully-annualized basis, using May 2019 data) for MIAX PEARL and MIAX is projected to be approximately $14.5 million. This projected revenue amount of $14.5 million represents approximately 20% of total net revenue of MIAX PEARL and MIAX for 2018 of approximately $72 million. The Exchange believes that an indirect expense allocation of 20% of total expense (less direct expense) to network connectivity services is fair and reasonable, as total projected network connectivity revenue represents approximately 20% of total net revenue for 2018. That is, direct expense of $8.5 million plus indirect expense of $12.3 million fairly reflects the total annual expense associated with providing the network connectivity services, both from the perspective of similar revenue and expense percentages (connectivity to total), as well as matching connectivity resources to connectivity expenses. The Exchange believes that this is a conservative allocation of indirect expense. Accordingly, the total projected MIAX PEARL and MIAX connectivity revenue, reflective of the proposed increase, on an annualized basis, of $14.5 million, is less than total annual actual MIAX PEARL and MIAX connectivity expense for 2018 of $20.8 million. The Exchange projects comparable network connectivity revenue and expense for 2019 for MIAX PEARL and MIAX. Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supracompetitive profit, when comparing the actual network connectivity costs to the Exchange versus the projected network connectivity annual revenue, including the increase amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 audited financial results, which will be publicly available as part of the Exchange's Form 1 filed with the Commission by June 30, 2019.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[41] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[42] While MIAX PEARL's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX PEARL believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX PEARL believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[43]

[41] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[42] *Id.*

[43] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see*

*B. Self-Regulatory Organization's Statement on Burden on Competition*

MIAX PEARL does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage. The Exchange believes that the Proposed Fee Increases do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fee Increases do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fee Increases reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fee Increases do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. Additionally, the Exchange other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[44] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect. While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[45] and Rule 19b–4(f)(2)[46] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2019–21 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–PEARL–2019–21. 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–PEARL–2019–21 and

*also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[44] *See supra* note 41.

[45] 15 U.S.C. 78s(b)(3)(A)(ii).

[46] 17 CFR 240.19b–4(f)(2).

should be submitted on or before August 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15025 Filed 7–15–19; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86342; File No. SR–MIAX–2019–31]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2019, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The Exchange previously filed the proposal on April 30, 2019 (SR–MIAX–2019–23). That filing has been withdrawn and replaced with the current filing (SR–MIAX–2019–31).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections (5a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, MIAX PEARL, LLC (''MIAX PEARL''). These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[4] The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.[5] The Commission received one comment letter on the proposal.[6] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission on September 17, 2018.[7] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the First Proposed Rule Change.[8]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.[9] The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.[10] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.[11] The Commission received one comment letter on the proposal.[12] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'') issued by the Commission on October 3, 2018.[13] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.[14]

[47] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 83786 (August 7, 2018), 83 FR 40106 (August 13, 2018)(SR–MIAX–2018–19) (the ''First Proposed Rule Change'').

[5] *Id.*

[6] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association (''Healthy Markets''), to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[7] *See* Securities Exchange Act Release No. 34–84175 (September 17, 2018), 83 FR 47955 (September 21, 2018) (SR–MIAX–2018–19) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 84398 (October 10, 2018), 83 FR 52264 (October 16, 2018) (SR–MIAX–2018–19 (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[10] *See* Securities Exchange Act Release No. 84357 (October 3, 2018), 83 FR 50976 (October 10, 2018) (SR–MIAX–2018–25) (the ''Second Proposed Rule Change'') (Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

[11] *Id.*

[12] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (''SIFMA Letter'').

[13] *See supra* note 10.

[14] *Id.*

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are reasonable. On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.[15]

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.[16] The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[17] The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[18] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.[19]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [20] The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

> The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[21]

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.[22]

The Exchange refiled the Proposed Fee Increases on April 30, 2019, designating the Proposed Fee Increases immediately effective.[23] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[24] The Fourth Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees (the ''Guidance'').[25]

The Commission received two comment letters on the Fourth Proposed Rule Change, after the Guidance was released.[26] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Fourth Proposed Rule Change to justify the Proposed Fee Increases based on the Guidance and the BOX Order. Of note, however, is that

[15] *See* Securities Exchange Act Release No. 84650 (November 26, 2018), 83 FR 61705 (November 30, 2018) (SR–MIAX–2018–25) (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members.).

[16] *See* Securities Exchange Act Release No. 85318 (March 14, 2019), 84 FR 10363 (March 20, 2019) (SR–MIAX–2019–10) (the ''Third Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule).

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[19] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

[20] *See* IEX Letter, pg. 1.

[21] *See* Second Healthy Markets Letter, pg. 2.

[22] *See* SR–MIAX–2019–10.

[23] *See* Securities Exchange Act Release No. 85836 (May 10, 2019), 84 FR 22205 (May 16, 2019) (SR–MIAX–2019–23) (the ''Fourth Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule).

[24] *Id.*

[25] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[26] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Fourth Proposed Rule Change. Also, Healthy Markets did not comment on the Fourth Proposed Rule Change.

The Exchange is now re-filing the Proposed Fee Increases (the ''Fifth Proposed Rule Change'') to bolster its cost-based discussion to support its claim that the Proposed Fee Increases are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit, in light of the Guidance issued by Commission staff subsequent to the Fourth Proposed Rule Change. The Exchange believes that the Proposed Fee Increases are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are, as demonstrated in the Fifth Proposed Rule Change and supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are, as demonstrated in the Fifth Proposed Rule Change and supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX PEARL, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [27] in general, and furthers the objectives of Section 6(b)(4) of the Act [28] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [29] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [30]

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. Further, of the number of Members that connect directly to MIAX, many such Members do not purchase market data from MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. For example, the following are not Members of MIAX: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX, it is the individual needs of the market maker that require whether they need one connection or multiple connections to

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(4).

[29] 15 U.S.C. 78f(b)(5).

[30] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity that market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX or its affiliates, MIAX PEARL and MIAX Emerald, they do not purchase connectivity to MIAX, and they do not purchase market data from MIAX. The Exchange recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[31] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAX and its affiliates. MIAX competes with nine (9) non-Members who resell MIAX connectivity. These are resellers of MIAX connectivity—they are not arrangements between broker-dealers to share connectivity costs, as SIFMA suggests. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX and/or MIAX PEARL. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX and/or MIAX PEARL. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX, constraining the price that MIAX is able to charge for connectivity to its Exchange.

The Exchange[32] and MIAX PEARL[33] are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX, MIAX PEARL, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX PEARL, or both, with the exception of one new Member who is currently in the on-boarding process. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Thus, the value of the 1Gb alternative is much lower than value of a 10Gb alternative, when measured based on

[31] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

[32] The Exchange has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members.*

[33] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members/pearl.*

the type of Exchange access it offers, which is the basis for difference in price between a 1Gb connection and a 10Gb connection. Approximately just less than half of MIAX and MIAX PEARL Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases ($9,300 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the network resources consumed by the market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative.

With respect to options trading, the Exchange had only 3.75% market share of the U.S. options industry in May 2019 in Equity/ETF classes according to the OCC.[34] For May 2019, the Exchange's affiliate, MIAX PEARL, had only 4.84% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[35] For May 2019, the Exchange's affiliate, MIAX Emerald, had only 0.77% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[36] The Exchange is not aware of any evidence that a combined market share of less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 45 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[37] Nasdaq ISE, LLC has approximately 100 members,[38] and NYSE American LLC has over 80 members.[39] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 45 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018. In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX and MIAX PEARL and targeting mid-market resting orders; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.[40] Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any

[34] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[35] *Id.*

[36] *Id.*

[37] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[38] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[39] *See https://www.nyse.com/markets/american-options/membership#directory.*

[40] The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

of the Exchange's connectivity options. MIAX did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges, demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the different levels of service provided and the largest percentage increase being associated with the lowest cost connection. Further, the Exchange believes that the fees are reasonably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange's network. It is these firms that account that also account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 75% of the volume on the Exchange. For example, in June of 2019, to date, approximately 7.8 million contracts of the 10.3 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume. The Exchange considered whether to increase transaction fees and other fees in order to offset its costs as an alternative to increasing connectivity fees, however, the Exchange determined that increasing its connectivity fees was the only viable alternative. This is because the increased costs are more closely associated with connectivity, as well as the intense level of competition among the options exchanges for order flow through transaction fees.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit. The Proposed Fee Increases will allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure to support this technology since it last filed to increase its connectivity fees in December 2016, which became effective on January 1, 2017.[41] Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development (''R&D'') efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to the expanding its Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since it last increased its connectivity fees on January 1, 2017.

Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, cost to MIAX and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million. These costs have increased over 10% since the last time the Exchange increased its connectivity fees on January 1, 2017. As these network connectivity-related expenses increase, MIAX and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the expense increases since January 1, 2017 include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note,

[41] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify the Exchange's Connectivity Fees).

regarding market data connectivity fee increased cost, this is the cost associated with MIAX consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX to effectively pay its competitors for this connectivity. While the Exchange and MIAX PEARL have incurred a total increase in connectivity expenses since January 2017 (the last time connectivity fees were raised) of approximately $1.5 million per year (as described above), the total increase in connectivity revenue amount as a result of the Proposed Fee Increases is projected to be approximately $1.2 million per year for MIAX and MIAX PEARL. Accordingly, the total projected MIAX and MIAX PEARL connectivity revenue as a result of the proposed increase, on an annualized basis, is less than total annual actual MIAX and MIAX PEARL connectivity expense. Accordingly, the Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the increase in actual costs to the Exchange (since January 2017) versus the projected increase in annual revenue.

The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since January 1, 2017.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 audited financial statements which will be publicly available as part of the Exchange's Form 1 Amendment, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the total annual expense of the Exchange associated with providing the network connectivity services versus the total projected annual revenue of the Exchange associated with providing the network connectivity services. For 2018, the annual expense associated with providing the network connectivity services (that is, the shared network connectivity of MIAX and MIAX PEARL, but excluding MIAX Emerald) was approximately $20.8 million. This amount is comprised of both direct and indirect expense. The direct expense (which relates 100% to the network infrastructure, associated data center processing equipment required to support various connections, network monitoring systems and associated software required to support the various forms of connectivity) was approximately $8.5 million (constituting primarily Information Technology expense in the Exchange's 2018 financial statements). The indirect expense (which includes expense from such areas as trading operations, software development, business development, information technology, marketing, human resources, legal and regulatory, finance and accounting) that the Exchange allocates to the maintenance and support of network connectivity services was approximately $12.3 million. This indirect expense amount of $12.3 million represents approximately 20% of the total annual expense of MIAX and MIAX PEARL for 2018 of approximately $70 million, less direct expense of $8.5 million ($70 million less $8.5 million equals $61.5 million multiplied by 20% equals $12.3 million). Total projected annualized revenue of the Exchange associated with selling the network connectivity services (reflecting the Proposed Fee Increases on a fully-annualized basis, using May 2019 data) for MIAX and MIAX PEARL is projected to be approximately $14.5 million. This projected revenue amount of $14.5 million represents approximately 20% of total net revenue of MIAX and MIAX PEARL for 2018 of approximately $72 million. The Exchange believes that an indirect expense allocation of 20% of total expense (less direct expense) to network connectivity services is fair and reasonable, as total projected network connectivity revenue represents approximately 20% of total net revenue for 2018. That is, direct expense of $8.5 million plus indirect expense of $12.3 million fairly reflects the total annual

expense associated with providing the network connectivity services, both from the perspective of similar revenue and expense percentages (connectivity to total), as well as matching connectivity resources to connectivity expenses. The Exchange believes that this is a conservative allocation of indirect expense. Accordingly, the total projected MIAX and MIAX PEARL connectivity revenue, reflective of the proposed increase, on an annualized basis, of $14.5 million, is less than total annual actual MIAX and MIAX PEARL connectivity expense for 2018 of $20.8 million. The Exchange projects comparable network connectivity revenue and expense for 2019 for MIAX and MIAX PEARL. Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supracompetitive profit, when comparing the actual network connectivity costs to the Exchange versus the projected network connectivity annual revenue, including the increase amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 audited financial results, which will be publicly available as part of the Exchange's Form 1 filed with the Commission by June 30, 2019.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[42] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[43] While MIAX's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[44]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

MIAX does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

The Exchange believes that the Proposed Fee Increases do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fee Increases do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fee Increases reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fee Increases do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. Additionally, the Exchange other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[45] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

[42] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[43] *Id.*

[44] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[45] *See supra* note 42.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[46] and Rule 19b–4(f)(2)[47] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–31 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–MIAX–2019–31. 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–MIAX–2019–31 and should be submitted on or before August 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15024 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

[46] 15 U.S.C. 78s(b)(3)(A)(ii).

[47] 17 CFR 240.19b–4(f)(2).

[48] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86339; File No. SR–NYSE–2019–28]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of Proposed Rule Change Amending Section 303A.08 of the Listed Company Manual Relating to Shareholder Approval of Equity Compensation Plans

July 10, 2019.

On May 13, 2019, New York Stock Exchange LLC (''NYSE'' or the ''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 amend Section 303A.08 of the Listed Company Manual (''Manual'') to clarify the circumstances under which certain sales of a listed company's securities will not be deemed to be equity compensation plans for purposes of the shareholder approval requirements set forth in that rule and to make a clarifying change to Section 312.04 of the Manual.

The proposed rule change was published for comment in the **Federal Register** on May 31, 2019.[3] The Commission has received no comments on the proposed rule change. On July 1, 2019, the Exchange withdrew the proposed rule change (SR–NYSE–2019–28).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15021 Filed 7–15–19; 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. 85937 (May 24, 2019), 84 FR 25313 (May 31, 2019).

[4] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

## Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*

Rule 607, SEC File No. 270–561, OMB Control No. 3235–0634, Request for a New OMB Control No.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation E (17 CFR 230.601–230.610a) exempts from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') securities issued by a small business investment company (''SBIC'') which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') or a closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Investment Company Act, so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed $5,000,000 and certain other conditions are met. Rule 607 under Regulation E (17 CFR 230.607) entitled, ''Sales material to be filed,'' requires sales material used in connection with securities offerings under Regulation E to be filed with the Commission at least five days (excluding weekends and holidays) prior to its use.[1] Commission

[1] Sales material includes advertisements, articles or other communications to be published in newspapers, magazines, or other periodicals; radio and television scripts; and letters, circulars or other written communications proposed to be sent given

staff reviews sales material filed under rule 607 for materially misleading statements and omissions. The requirements of rule 607 are designed to protect investors from the use of false or misleading sales material in connection with Regulation E offerings.

Respondents to this collection of information include SBICs and BDCs making an offering of securities pursuant to Regulation E. Two filings were submitted to the Commission under rule 607 in 2016, 2017, and 2018. Accordingly, we estimate one annual response. Each respondent's reporting burden under rule 607 relates to the burden associated with filing its sales material electronically, which is negligible. For administrative purposes, we estimate an annual burden of one hour.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 11, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15045 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

or otherwise communicated to more than ten persons.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86341; File No. SR–ICC–2019–008]**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures and ICC Risk Management Framework

July 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to formalize the ICC Clearing Participant (''CP'') Default Management Procedures (''Default Management Procedures''). ICC also proposes related default management enhancements to the ICC Risk Management Framework. These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICC proposes to formalize the Default Management Procedures. ICC also proposes related default management enhancements to the Risk Management Framework. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

Default Management Procedures

The Default Management Procedures set forth ICC's default management process, including the actions taken by ICC to determine that a CP is in default as well as the actions taken by ICC in connection with such default to close-out the defaulter's portfolio (the ''Close-Out''). Currently, ICC's default management rules and procedures, including the tools available to manage a default and return to a matched book, are in several ICC documents, including the ICC Rules, the Default Auction Procedures—Initial Default Auctions, and the Secondary Auction Procedures. The Default Management Procedures do not change ICC's existing default management rules and procedures. Instead, the Default Management Procedures provide additional detail with respect to ICC's existing default management rules and procedures, such as assigning responsibility for default management actions and adding instructions on how to perform default management actions. ICC's default management process is comprised of the following sub-processes, each of which is detailed in a section in the document: Monitoring CPs to identify those that are at risk of defaulting or are in default (''Default Risk CPs''); declaring a default; transferring a defaulter's client portfolios (''Porting Portfolios'') to non-defaulting Futures Commission Merchants (''Potential Receiving FCMs''); consulting with the CDS Default Committee, which is comprised of representatives from no more than three CDS Committee-Eligible Participants; [3] performing Standard Default Management Actions and Secondary Default Management Actions to facilitate the Close-Out; and managing default resources.

The Default Management Procedures introduce ICC's default management process. The document contains a list of defined terms that are key for default management and an overview of ICC's default management process that consists of descriptions of the abovementioned sub-processes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A CP that has been approved by the Board for participation in the CDS Default Committee.

Moreover, the Default Management Procedures describe how ICC and its CPs maintain operational readiness to execute the default management process. ICC maintains a CDS Default Committee whose members consist of experienced trading personnel at CDS Committee-Eligible Participants that serve on the CDS Default Committee on a six-month rotating basis and, upon the declaration of a CP default, are seconded to ICC to assist with default management. The Default Management Procedures set forth detailed procedures for performing tasks that are necessary to maintain operational readiness, including administering the CDS Default Committee rotation process, working with customers of CPs who want to directly participate in auctions (''Direct Participating Customers''), maintaining up-to-date contact information, and testing the default management process (''Default Test''). ICC annually conducts a Default Test, in coordination with its CPs, and reviews the results to identify any issues or lessons learned.

The Default Management Procedures describe the sub-process of monitoring CPs. As part of a counterparty monitoring program, ICC performs daily, weekly, and quarterly monitoring designed, in part, to identify Default Risk CPs. Upon identifying such CPs, the ICC President (the ''President'') may take no action or may activate the team responsible for overseeing the default management process, which is composed of ICC management, the ICC Risk Oversight Officer, and the most senior member of the Treasury Department (''Head of Treasury'') (together, the ''Close-Out Team''), to move forward with the process of declaring a default. The Default Management Procedures establish the general procedures for identifying Default Risk CPs and activating the Close-Out Team in addition to the procedures that are specific to certain types of defaults and circumstances, including where a CP fails to meet payment obligations to ICC; a CP has filed for bankruptcy or is likely to fail to meet obligations due to dissolution, insolvency, or bankruptcy related events; a CP has not complied, or is likely not to comply, with certain limitations, conditions, or restrictions imposed on it by ICC; and a CP or its guarantor has failed, or is likely to fail, to meet obligations of ICC membership.

ICC's activities immediately after the identification of a potential default comprise the default declaration sub-process. The Default Management Procedures list the actions that the Close-Out Team performs after activation but before a default declaration. The Close-Out Team holds an initial meeting to discuss, among other matters, the circumstances surrounding the Default Risk CP(s), ICC's strategy for the Close-Out, and ICC's plans for meeting upcoming payment obligations. When the ICC General Counsel (''General Counsel'') is satisfied that all conditions for determining the Default Risk CP(s) to be in default are met and all required approvals are secured, the General Counsel confirms by email which Default Risk CP(s) are in default. ICC then communicates the default(s), including to ICC's CPs, regulators, Risk Committee chairman, and the public. The Default Management Procedures also set forth the procedures applicable to the Close-Out Team following a default declaration to prepare for the Close-Out.

The Default Management Procedures discuss the CDS Default Committee consultation sub-process. Certain matters are subject to consultation with the CDS Default Committee, including the unwinding of the defaulter's remaining portfolio and the structure and characteristics of an auction, and certain actions may be delegated to the CDS Default Committee, such as executing Initial Cover Transactions [4] on ICC's behalf. The Default Management Procedures establish procedures for convening and adjourning a CDS Default Committee meeting in addition to the actions taken at the initial CDS Default Committee meeting, which include reviewing the defaulter's cleared portfolio, the Close-Out strategy, the plan for transferring the Porting Portfolios to Potential Receiving FCMs, and a schedule for re-convening the CDS Default Committee over the period required to complete the Close-Out (the ''Close-Out Period'').

To facilitate the Close-Out, ICC performs Standard Default Management Actions during the Close-Out Period. ICC allows customers of CPs who are not yet Direct Participating Customers to register as such during the Close-Out Period to take part in auctions run by ICC. The ICC Risk Department (''Risk Department'') and Close-Out Team work together, in consultation with the CDS Default Committee, to implement the Close-Out strategy through Standard Default Management Actions. Specifically, the Default Management Procedures incorporate instructions on executing Initial Cover Transactions by auction and bilaterally, conducting Initial Default Auctions (''Initial Auctions''),[5] and executing bilateral direct liquidation transactions in the market to liquidate positions. The document further assigns responsibility for tracking the position changes that result from the movement of positions or the creation of new positions.

In addition to Standard Default Management Actions, ICC may take Secondary Default Management Actions to facilitate the Close-Out where default resources are significantly depleted or no default resources remain. ICC may call for assessment contributions, which CPs are obligated to meet by providing additional amounts to the Guaranty Fund (''GF''), in the event that the GF has been depleted or ICC anticipates the need for additional funds related to a default. The Default Management Procedures discuss the procedures for calling for assessment contributions and initiating a Cooling-Off Period.[6] During the Cooling-Off Period, the Risk Department and Close-Out Team, in consultation with the CDS Default Committee, continue to try to liquidate the defaulter's remaining portfolio through Secondary Auctions,[7] which are subject to additional governance requirements. If available default resources are exhausted and ICC has not returned to a matched book, the Close-Out Team uses reasonable efforts to consult with the Risk Committee and then seeks the Board's decision on whether to (1) enter a Loss Distribution Period,[8] (2) execute a partial tear-up, [9] (3) or terminate clearing services. The Default Management Procedures detail the procedures for each of the abovementioned Secondary Default Management Actions, including notifying the public, CPs, and regulators; consulting with the Risk Committee; obtaining the requisite

[4] As part of the Close-Out, ICC may enter into transactions with CPs with respect to the defaulter's open positions to facilitate an orderly unwind of the defaulter's open positions and to mitigate damages to ICC and other CPs.

[5] The Default Auction Procedures—Initial Default Auctions, which govern Initial Auctions are available at: *https://www.theice.com/publicdocs/ICC_Default_Auction_Procedures.pdf.*

[6] During a Cooling-Off Period, the aggregate liability of CPs for ents of the GF and assessment contributions would be capped at ''3x'' their GF contribution for all defaults during that period.

[7] The Secondary Auction Procedures, which govern Secondary Auctions are available at: *https://www.theice.com/publicdocs/ICC_Secondary_Auction_Procedures.pdf.*

[8] A Loss Distribution Period commences from and includes the date specified by ICC in a notice following a reduced gains distribution (''RGD'') determination. RGD allows ICC to reduce payment of variation gains that would otherwise be owed to CPs as ICC attempts a Secondary Auction or conducts a partial tear-up.

[9] In a partial tear-up, ICC terminates positions of non-defaulting CPs that exactly offset those in the defaulting CP's remaining portfolio.

Board approvals; and executing the action.

The Default Management Procedures provide an overview of the post-default porting sub-process. The Risk Department, in consultation with the CDS Default Committee, determine which Porting Portfolios to try to transfer to Potential Receiving FCMs. To facilitate the transfers, ICC distributes the Porting Portfolios to Potential Receiving FCMs and asks them to indicate which portfolios they are willing to receive by a deadline (''Porting Response Deadline''). The Default Management Procedures also discuss specific procedures for post-default porting in the case of a bankruptcy-related default, which require ICC to communicate and coordinate with the defaulter's trustee in bankruptcy. Following the Porting Response Deadline, ICC determines which Porting Portfolios to transfer to which Potential Receiving FCMs, communicates to each Potential Receiving FCM its assigned Porting Portfolios (if any), and executes the relevant transfers.

The Default Management Procedures set forth the default resource management sub-process. The document includes procedures for the identification and execution of collateral management activities that are necessary for ICC to meet upcoming payment obligations. The Close-Out Team meets daily during the Close-Out Period to review the available liquid resources and determine how to meet upcoming payment obligations. The Chief Operating Officer and Head of Treasury coordinate the execution of collateral management activities, including liquidating non-cash collateral in the defaulter's house and/or client accounts or utilizing ICC's committed FX or committed repo facilities. Further, the Default Management Procedures describe the maintenance of a Default Management Ledger, which serves as a record to facilitate decision making and implement ICC's default waterfall; the discussion points during the Close-Out Team's daily meeting during the Close-Out Period; and the application of any special payments during the Close-Out Period.

Risk Management Framework

ICC proposes related default management enhancements to the ICC Risk Management Framework. Specifically, ICC proposes to incorporate a reference to the Default Management Procedures in the 'Governance and Organization' section to specify that the Default Management Procedures contain details regarding default management roles and responsibilities of the Board, ICC management, and relevant committees. Additionally, ICC proposes changes to the 'Waterfall Level 6: GF Replenishment' sub-section to more clearly describe CPs' obligations with respect to replenishment and assessment contributions to the GF. The proposed edits provide additional detail regarding the aggregate liability of CPs for replenishment and assessment contributions. If the cap on the additional GF contributions is reached, ICC may apply additional Initial Margin (''IM'') requirements if necessary to maintain compliance with regulatory financial resources requirements. The proposed changes further discuss how the additional IM requirements are computed and communicated to CPs. ICC also proposes to clarify the maximum contribution of a retiring CP that has given notice of its intent to terminate its CP status. Given the proposed formalization of the Default Management Procedures, ICC proposes replacing a reference to Appendix 3 of the Risk Management Framework (''Appendix 3''), which currently contains default management procedures, with a reference to the Default Management Procedures in the 'Default Treatment' sub-section and removing Appendix 3 from the Risk Management Framework.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [10] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F), [11] because ICC believes that the proposed rule change enhances ICC's ability to manage the risk of a default by describing the processes for declaring a default and facilitating the Close-Out and by providing additional details regarding the roles and obligations of various stakeholders, such as the Board, Risk Committee, Close-Out Team, CPs, and the CDS Default Committee. Namely, the Default Management Procedures provide more detail with respect to ICC's existing default management rules and procedures, including assigning responsibility for default management actions and adding instructions on how to perform default management actions. The proposed changes to the Risk Management Framework incorporate reference to the proposed Default Management Procedures and more clearly describe CPs' obligations and aggregate liability with respect to replenishment and assessment contributions to the GF. ICC believes that the formalization of the Default Management Procedures and the amendments to the Risk Management Framework augment ICC's procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.[12]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[13] Rule 17Ad–22(b)(3) [14] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The Default Management Procedures provide detailed instructions regarding the process for managing a default and returning to a matched book, including conducting Standard and Secondary

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] *Id.*

[12] *Id.*

[13] 17 CFR 240.17Ad–22.

[14] 17 CFR 240.17Ad–22(b)(3).

Default Management Actions, identifying and executing collateral management activities to meet payment obligations, and tracking default management resources. The proposed changes to the Risk Management Framework provide additional clarity regarding CPs' obligations regarding replenishment and assessment contributions as well as the computation of additional IM requirements that allow ICC to maintain compliance with regulatory financial resources requirements. ICC believes that such changes enhance ICC's ability to manage a default by providing additional detail, transparency and clarity with respect to ICC's default management rules and procedures, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[15]

Rule 17Ad–22(d)(4) [16] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure, and have adequate scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations. The Default Management Procedures describe how ICC and its CPs maintain operational readiness to execute the default management process. The document sets forth ICC's processes for carrying out an annual Default Test, reviewing the results of the annual Default Test, and maintaining up-to-date contact information for default contacts. Such testing and preparation allow ICC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity, consistent with the requirements of Rule 17Ad–22(d)(4).[17]

Rule 17Ad–22(d)(8) [18] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act.[19] The proposed changes to the Risk Management Framework strengthen the governance arrangements set forth in the document by incorporating reference to the Default Management Procedures to note the default management roles and responsibilities of the Board, ICC management, and relevant committees. Moreover, the Default Management Procedures clearly assign and document responsibility and accountability for default management actions and decisions. The governance procedures provide for consultation with the Risk Committee and the CDS Default Committee, approval from the Board, and notification to the public, CPs, and regulators. As such, these governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the Board, Risk Committee, CDS Default Committee, and Close-Out Team is clearly documented, consistent with the requirements of Rule 17Ad–22(d)(8).[20]

Rule 17Ad–22(d)(11) [21] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. ICC's default management rules and procedures contained in the ICC Rules, the Default Auction Procedures—Initial Default Auctions, and the Secondary Auction Procedures are publically available on ICC's website. Additionally, the proposed Default Management Procedures clarify and augment ICC's existing rules and procedures relating to default management and enhance ICC's ability to withstand defaults and continue providing clearing services, including by assigning responsibility for default management actions and adding instructions on how to perform default management actions, to ensure that ICC can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, consistent with the requirements of Rule 17Ad–22(d)(11).[22]

*(B) Clearing Agency's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed rule change to formalize the ICC Default Management Procedures and to amend the ICC Risk Management Framework will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

## III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2019–008 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2019–008. This file number should be included on the

[15] *Id.*

[16] 17 CFR 240.17Ad–22(d)(4).

[17] *Id.*

[18] 17 CFR 240.17Ad–22(d)(8).

[19] 15 U.S.C. 78q–1.

[20] 17 CFR 240.17Ad–22(d)(8).

[21] 17 CFR 240.17Ad–22(d)(11).

[22] *Id.*

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2019–008 and should be submitted on or before August 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15023 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86345; File No. SR–MIAX–2019–32]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 503, Openings on the Exchange

July 10, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 503, Openings on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, to make minor non-substantive edits to harmonize the rule text to that of the Exchange's affiliate, MIAX Emerald, LLC (''MIAX Emerald'' or ''Emerald''). Additionally, the Exchange proposes to amend subsection (f)(2)(iv)(A)2. to adopt new rule text relating to the price at which an Intermarket Sweep Order (''ISO'') is routed in order to align the rule text to the operation of the System.[3] The Exchange also proposes to adopt new subsection (f)(2)(xi) related to the operation of Route Timers and Imbalance Timers during the Opening Process.[4] Finally, the Exchange proposes to amend paragraph (g) to adopt new rule text that identifies Help Desk staff authorized to take actions during Opening Process to maintain a fair and orderly market.

First, the Exchange proposes to amend subsection (b) to adopt new rule text that is identical to rule text found in Emerald,[5] to state that the order types that may participate in the opening process are set forth in Rule 516, Order Types Defined. The Exchange believes that this provides additional detail and clarity to the rule.

Next, the Exchange proposes to amend subsection (f)(2)(iv) to insert the word ''Trading'' to provide consistency and clarity within the rule text. The rule discusses Minimum Trading Increments,[6] and the last reference in the sentence is to the Minimum Increment. The Exchange now proposes to change this phrase to, ''Minimum Trading Increment,'' to align to the rest of the rule text and to the rule text of Emerald.[7]

Next, the Exchange proposes to amend subsection (f)(2)(iv)(A)(1.) and (2.) to correct the formatting of subsection (1.) and (2.) to remove the parentheses to make the formatting consistent with the hierarchical convention used throughout the rulebook. The Exchange also proposes to amend subsection 2. to conform the rule to the current System behavior and state that any order that is routed pursuant to this Rule will be marked as an Intermarket Sweep Order (''ISO''), as defined in Rule 1400(h), with a limit price equal to the ''away market's displayed price,'' and not the Exchange's ''opening price'' as currently stated in the rule.[8]

As described in the Exchange's current rule, the Exchange will route to other markets disseminating prices better than the Exchange's opening price and will also route to other markets disseminating prices equal to the Exchange's opening price if necessary.[9] Given that the order is being routed to another market center for execution the limit price of the order being routed should be equal to the away market's displayed price rather than the Exchange's opening price (although, in

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] *See* Exchange Rule 503(f).

[5] *See* MIAX Emerald Exchange Rule 503(b).

[6] *See* Exchange Rule 510.

[7] *See* MIAX Emerald Exchange Rule 503(f)(2)(iv).

[8] The Exchange notes that Rule 1400(h) pertains primarily to ISOs received by the Exchange, whereas in this instance the Exchange will be sending the ISO to another exchange.

[9] *See* Exchange Rule 503(f)(2)(iv)(A).

certain circumstances the away market's displayed price may be equal to the Exchange's opening price) as currently articulated in the Rule. The Exchange notes that this change was also recently made by MIAX Emerald.[10]

Next, the Exchange proposes to amend subsection (f)(2)(vii)(A) to update and relocate the parenthetical which currently follows the text, ''Opening Orders ('OPG Orders')'' so that the proposed rule texts reads, ''Opening ('OPG') Orders'' and is aligned to the current MIAX Emerald rule.[11]

Next, the Exchange proposes to reorganize subsection (f)(2)(viii) to move a parenthetical phrase closer to its subject to make the sentence easier to read. Specifically, the parenthetical, ''(including limit orders that are treated as market orders except for limit orders in series with a bid of $0.00 and an offer less than $0.05, which will not be treated as market orders),'' will be placed after the phrase market orders, making the proposed rule text read as follows, ''[t]he System will give priority to market orders (including limit orders that are treated as market orders except for limit orders in series with a bid of $0.00 and an offer less than $0.05, which will not be treated as market orders) first in type, then in time priority, then to resting limit orders at the opening price.'' The Exchange believes relocating the parenthetical phrase helps clarify the rule.

Next, the Exchange proposes to adopt new paragraph (xi) to subsection (f)(2) to state that any Route Timer or Imbalance Timer in process shall terminate with respect to an option if at any time during the Opening Process there is a trading halt or trading pause in such option on the Exchange. The option may be subject to any new subsequent Route Timer or Imbalance Timer during the Opening Process upon the termination of the trading halt or trading pause for such option. The Exchange believes this adds additional detail and clarity to the rule concerning the operation of Route Timers and Imbalance Timers on the Exchange, additionally, this rule text is identical to that of MIAX Emerald.[12]

Finally, the Exchange proposes to amend subsection (g) to state that Senior Help Desk personnel may deviate from the standard manner of the Opening Process when necessary, including delay or compel the opening of any series in any option class, modify timers or settings described in this Rule, when necessary in the interests of commencing or maintaining a fair and orderly market, in the event of unusual market conditions or in the public interest. The Exchange will make and maintain records to document all determinations to deviate from the standard manner of the Opening Process, and periodically review these determinations for consistency with the interests of a fair and orderly market. The Exchange is amending the rule to add additional specificity by designating that only Senior Help Desk personnel may deviate from the standard manner of the Opening Process when necessary. The Exchange is also providing examples of the type of actions that Senior Help Desk personnel may take to ensure a fair and orderly market is maintained. Additionally, the Exchange is proposing to amend the rule to adopt a provision stating that the Exchange will maintain records to document all determinations to deviate from the standard manner of the Opening Process, and periodically review these determinations for consistency with the interests of a fair and orderly market. The Exchange notes that the proposed rule text is identical to that found in the MIAX Emerald Rule.[13]

The Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX Options rules, the proposed changes will promote uniformity with MIAX Options with respect to rules that are intended to be identical. MIAX Emerald and MIAX Options may have a number of Members [14] in common, and where feasible the Exchange intends to implement similar behavior to provide consistency between MIAX Options and MIAX Emerald so as to avoid confusion among Members.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(5) of the Act [16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange is proposing to add additional detail to the rule to provide clarity and precision in the Exchange's rule. The Exchange proposes to provide an internal cross reference to Rule 516, Order Types, where a list of valid order types eligible to participate in the opening process may be found. Additionally, the Exchange is proposing to make a number of non-substantive changes by adding clarifying text to the rule which provides additional detail and clarity to the rule. Clarity and transparency of the Exchange's rules benefits investors and the public by eliminating the potential for confusion.

The Exchange's proposal to correctly identify the price at which orders may be routed during the Opening Process removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by ensuring that interest routed as a result of an imbalance on the Exchange during its Opening Process is properly priced for execution. This reduces the risk of trading through [17] other market centers and promotes just and equitable principles of trade by routing orders to market centers where they may receive an execution. The Exchange's proposal more accurately describes how the System prices interest being routed pursuant to the Opening Process. The Exchange believes its proposal provides accuracy and clarity to the rule and protects investors and the public interest by clearly and accurately describing Exchange functionality which may influence investors' decisions concerning the submission of their orders.

The Exchange is proposing to adopt a new provision regarding the operation of Route Timers and Imbalance Timers during the Opening Process. The Exchange's proposed rule will provide that any Route Timer or Imbalance Timer in process during the Opening Process shall terminate with respect to an option if at any time during the Opening Process there is a trading halt or a trading pause in such option. The Exchange believes this provision promotes just and equitable principles of traded [sic] and removes impediments to and perfects the

[10] *See* Securities Exchange Act Release No. 85910 (May 22, 2019), 84 FR 24840 (May 29, 2019) (SR–EMERALD–2019–22).

[11] *See* MIAX Emerald Exchange Rule 503(f)(2)(vii)(A).

[12] *See* MIAX Emerald Exchange Rule 503(f)(2)(xi).

[13] *See* MIAX Emerald Exchange Rule 503(g).

[14] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] A trade-through occurs when one trading center executes an order at a price that is inferior to the price of a protected quotation, often representing an investor limit order, displayed by another trading center.

mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, and contributes to the operation of a fair and orderly market by immediately ceasing any activity in any option that is subject to a trading halt or a trading pause.

This provision is identical to a provision found in MIAX Emerald.[18] The Exchange believes adding this provision provides additional detail to the rule and protects investors and the public interest by clearly describing Exchange functionality which may influence investors' decisions concerning the submission of orders. The Exchange is proposing to harmonize the MIAX Options rule to that of MIAX Emerald as the opening process is similar and wherever possible the Exchange would like to harmonize identical rules so that the only differences between the rules of the two exchanges are those that are intentional.

Finally, the Exchange is proposing to amend its current provision pertaining to the actions that the Help Desk may take in the interests of maintaining a fair and orderly market to adopt a more detailed and nuanced provision from MIAX Emerald. This provision identifies which Help Desk personnel may take actions during the Opening Process (Senior Help Desk personnel) and provides examples of the type of actions which may be undertaken. Additionally, the provision provides that the Exchange will make and maintain records to document all determinations to deviate from the standard manner of the Opening Process and periodically reviewing these determinations for consistency with the interests of a fair and orderly market. The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing additional detail in the Exchange's rules and by providing a review process for instances where there was a deviation from the standard Opening Process.

The Exchange believes its proposal removes impediments to and perfects the mechanisms of a free and open market by providing clarity in the Exchange's rules and more detail concerning the Opening Process on the Exchange. The Exchange believes clarity and transparency benefits investors and the public and allows investors and the public to make informed decisions regarding the submission of orders to the Exchange.

Additionally, the Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX Options rules, the proposed changes will promote uniformity with MIAX Emerald with respect to rules that are intended to be identical. The Exchange believes that it will reduce the potential for confusion by its members that are also members of MIAX Emerald if the only differences between MIAX Options rules and MIAX Emerald rules are those that are intended.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the proposed rule change adds additional detail to the Exchange's rules and further clarifies current Exchange functionality and is not a competitive filing. The Exchange does not believe the proposed rule regarding the price of routed orders will impose any burden on inter-market competition as exchanges routinely route orders to one another and there is no change to the Exchange's functionality related to routing orders during the Opening Process.

Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Opening Process affects all Members equally, and the specific situation that the proposal addresses occurs only in the limited instance as described herein.

The Exchange does not believe that the proposed rule change to adopt new rule text pertaining to the termination of Route Timers or Imbalance Timers during the Opening Process when there is a trading halt or trading pause in the option will impose any burden on inter-market competition as the change pertains only to the Exchange's Opening Process.

Additionally, the Exchange does not believe that the proposed rule change to amend the provision concerning the actions that the Help Desk may take to deviate from the standard manner of the Opening Process to maintain a fair and orderly market will impose any burden on inter-market competition as the proposed rule change is designed to identify the specific Help Desk personnel authorized to deviate from the standard manner of the Opening Process and to provide some examples of the type of actions that may be undertaken to ensure the operation of a fair and orderly market.

The Exchange does not believe that the proposed changes impose a burden on intra-market competition as the proposed changes are designed to provide additional detail and clarity in the Exchange's rules and are not intended to influence competition among Members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6)[20] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[18] *See supra* note 12.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–32 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–MIAX–2019–32. 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–MIAX–2019–32 and should be submitted on or before August 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15027 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension*:

Rule 17Ad–10, SEC File No. 270–265, OMB Control No. 3235–0273

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ad–10, (17 CFR 240.17Ad–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ad–10 generally requires registered transfer agents to: (1) Create and maintain current and accurate securityholder records; (2) promptly and accurately record all transfers, purchases, redemptions, and issuances, and notify their appropriate regulatory agency if they are unable to do so; (3) exercise diligent and continuous attention in resolving record inaccuracies; (4) disclose to the issuers for whom they perform transfer agent functions and to their appropriate regulatory agency information regarding record inaccuracies; (5) buy-in certain record inaccuracies that result in a physical over issuance of securities; and (6) communicate with other transfer agents related to the same issuer. These requirements assist in the creation and maintenance of accurate securityholder records, enhance the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding over issuance.

The rule also has specific recordkeeping requirements. It requires registered transfer agents to retain certificate detail that has been deleted for six years and keep current an accurate record of the number of shares or principal dollar amount of debt securities that the issuer has authorized to be outstanding. These mandatory requirements ensure accurate securityholder records and assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

There are approximately 333 registered transfer agents. We estimate that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 80 hours per year, which generates an industry-wide annual burden of 26,640 hours (333 times 80 hours). This burden is primarily of a recordkeeping nature but also includes a small amount of third party disclosure. At an average staff cost of $50 per hour, the industry-wide internal labor cost of compliance (a monetization of the burden hours) is approximately $1,332,000 per year (26,640 × $50). In addition, we estimate that each transfer agent will incur an annual external cost burden of $18,000 resulting from the collection of information. Therefore, the total annual external cost on the entire transfer agent industry is approximately $5,994,000 ($18,000 times 333). This cost primarily reflects ongoing computer operations and maintenance associated with generating, maintaining, and disclosing or providing certain information required by the rule.

The amount of time any particular transfer agent will devote to Rule 17Ad–10 compliance will vary according to the size and scope of the transfer agent's business activity. We note, however, that at least some of the records, processes, and communications required by Rule 17Ad–10 would likely be maintained, generated, and used for transfer agent business purposes even without the rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: July 9, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15032 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*

Rule 17Ad–17, SEC File No. 270–412, OMB Control No. 3235–0469

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–17 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–17 requires certain transfer agents and broker-dealers to make two searches for the correct address of lost securityholders using an information database without charge to the lost securityholders. In addition, paying agents are required to attempt to notify lost payees at least once. In addition, the entities also are required to maintain records relating to the searches and notifications.

The Commission staff estimates that the rule applies to approximately 507 broker dealers and transfer agents, and 2,705 paying agent entities, including carrying firms, transfer agents, indenture trustees, custodians, and approximately 10% of issuers. The Commission staff estimates that the total annual burden for searches is approximately 183,813 hours and the total annual burden for paying agent notifications is approximately 33,850 hours. In addition, approximately 5,765 burden hours are associated with recordkeeping, representing an annual burden of 4,411 hours for the broker-dealers and transfer agents, and 1,354 for paying agents. The Commission staff estimates that the aggregate annual burden is therefore approximately 223,428 hours (183,813 + 33,850 + 5,765).

In addition, the Commission staff estimates that covered entities will incur costs of approximately $6,617,298 annually, primarily as payment to third party data base providers that will search for the missing securityholders.

The retention period for the recordkeeping requirement under Rule 17Ad–17 is not less than three years following the date the notice is submitted. The recordkeeping requirement under this rule is mandatory to assist the Commission in monitoring compliance with the rule. This rule does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 11, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15044 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*

Rule 7d–2, SEC File No. 270–464, OMB Control No. 3235–0527

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (''Canadian-U.S. Participants'' or ''participants'') often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or ''cashing out'') those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most investment companies (''funds'') that are ''qualified companies'' for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of 1940 (''Investment Company Act'').[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 7d–2 under the Investment Company Act [3] permits foreign funds to offer securities to Canadian-U.S. Participants and sell

[1] 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 (''Securities Act'') is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

[3] 17 CFR 270.7d–2.

securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act.

Rule 7d–2 contains a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[4] Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d–2 does not require any documents to be filed with the Commission.

Rule 7d–2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 4,086 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.[5] The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 204 (5 percent) additional Canadian funds would newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 612 offering documents. The staff therefore estimates that 204 respondents would make 612 responses by adding the new disclosure statement to 612 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d–2 disclosure requirement would be 102 hours (612 offering documents x 10 minutes per document). The total annual cost of these burden hours is estimated to be $42,330 (102 hours × $415 per hour of attorney time).[6]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 9, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15034 Filed 7–15–19; 8:45 am]

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[4] 44 U.S.C. 3501–3502.

[5] Investment Company Institute, 2019 Investment Company Fact Book (2019) at 258, tbl. 66.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $380 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86344; File No. SR–EMERALD–2019–24]**

## Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt System Connectivity Fees

July 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to adopt the Exchange's system connectivity fees.

The Exchange previously filed the proposal on April 30, 2019 (SR–EMERALD–2019–20). That filing has been withdrawn and replaced with the current filing (SR–EMERALD–2019–24).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections (5a) and (b) of the Fee Schedule to adopt the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to adopt network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections (with the exception of the 10Gb ULL) are shared connections (collectively, the ''Shared Connections''), and thus can be utilized to access the Exchange and both of the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX PEARL''). The 10Gb ULL connection is a dedicated connection (''Dedicated Connection''), which provides network connectivity solely to the trading platforms, market data systems, and test system facilities of MIAX Emerald. These proposed fees are collectively referred to herein as the ''Proposed Fees.'' The amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL.[4] While the Exchange is new and only launched trading on March 1, 2019, since: (i) All of the Proposed Fees (except for the fee relating to the 10Gb ULL connection) relate to Shared Connections, and thus are the same amounts as are currently in place at MIAX and MIAX PEARL; (ii) all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections (without paying any new incremental connectivity fees), the Exchange is providing similar information to that which was provided in the MIAX and PEARL Fee Filings, including providing detail about the market participants impacted by the Proposed Fees, as well as the costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

The Exchange initially filed the Proposed Fees on March 1, 2019, designating the Proposed Fees immediately effective.[5] The First Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[6] The First Proposed Rule Change provided information about the market participants impacted by the Proposed Fees, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[7] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the First Proposed Rule Change.[8]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the Proposed Fees. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the First Proposed Rule Change. Despite the objection to the Proposed Fees, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [9] The IEX Letter specifically argued that the Proposed Fees were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX Emerald and its affiliates considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the First Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fees. Specifically, the Second Healthy Markets Letter stated that the First Proposed Rule Change was ''remarkably

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* SR–MIAX–2019–31 and SR–PEARL–2019–21 (the ''MIAX and PEARL Fee Filings'').

[5] *See* Securities Exchange Act Release No. 85316 (March 14, 2019), 84 FR 10350 (March 20, 2019) (SR–EMERALD–2019–11) (the ''First Proposed Rule Change'').

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[8] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

[9] *See* IEX Letter, pg. 1.

different,'' and went on to further state as follows:

The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[10]

On April 29, 2019, the Exchange withdrew the First Proposed Rule Change.[11]

The Exchange refiled the Proposed Fees on April 30, 2019, designating the Proposed Fees immediately effective.[12] The Second Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[13] The Second Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fees are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fees are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees (the ''Guidance'').[14]

The Commission received two comment letters on the Second Proposed Rule Change, after the Guidance was released.[15] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Second Proposed Rule Change to justify the Proposed Fees based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Second Proposed Rule Change. Also, Healthy Markets did not comment on the Second Proposed Rule Change.

The Exchange is now re-filing the Proposed Fees (the ''Third Proposed Rule Change'') to bolster its cost-based discussion to support its claim that the Proposed Fees are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit, in light of the Guidance issued by Commission staff subsequent to the Second Proposed Rule Change. The Exchange believes that the Proposed Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are, as demonstrated in the Third Proposed Rule Change and supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are, as demonstrated in the Third Proposed Rule Change and supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fees are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange offers to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange also offers to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its disaster recovery facility, consisting of a 1Gb fiber connection and a 10Gb connection.

For the Shared Connections, the Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL, via a single, shared connection. Any Member or non-Member can purchase a Shared Connection.

For the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect. Accordingly, the Exchange is able to offer to its Members 10Gb ULL connectivity at a lower price point than is offered on MIAX and MIAX PEARL, the price difference being reflective of the lower cost to the Exchange.

For the Shared Connections, Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange, MIAX, and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. Thus, since all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections, most Members of MIAX Emerald have instant connectivity to the Exchange without paying any new incremental connectivity fees, as more fully-detailed below.

The Exchange proposes to establish the monthly network connectivity fees for such connections for both Members and non-Members. As discussed above, the amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL. The amount of the Proposed Fee for the Dedicated Connection is offered at a substantial discount to the amount currently in place at MIAX and MIAX PEARL. The reasons for the substantial discount are that the Dedicated Connection offers access to only a single market (the Exchange), whereas the 10Gb ULL connection offered by MIAX and MIAX PEARL offers access to two markets

[10] *See* Second Healthy Markets Letter, pg. 2.

[11] *See* SR–EMERALD–2019–11.

[12] *See* Securities Exchange Act Release No. 85839 (May 10, 2019), 84 FR 22192 (May 16, 2019) (SR–EMERALD–2019–20) (the ''Second Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt System Connectivity Fees).

[13] *Id.*

[14] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[15] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

(MIAX and MIAX PEARL), as well as cost savings the Exchange was able to achieve (and thus pass through to its Members) as a result of a dedicated architecture. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be as follows: (a) 1,400 for the 1Gb connection; and (b) $6,000 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be as follows: (a) $550 for the 1Gb connection; and (b) $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [18] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fees are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX Emerald as compared to the much greater number of members at other options exchanges (as further detailed below). MIAX Emerald is a brand new exchange, having only commenced operations in March 2019. Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. Further, of the number of Members that connect directly to MIAX Emerald, many such Members do not purchase market data from MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchanges but not Members of MIAX Emerald. For example, the following are not Members of MIAX Emerald: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX Emerald, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX Emerald or its affiliates, MIAX and MIAX PEARL, they do not purchase connectivity to MIAX Emerald, and they do not purchase market data from MIAX Emerald. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX Emerald, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[20] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase a 10Gb ULL

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[20] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

connection. The 1Gb connection is too small to support those data feed products. MIAX Emerald notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAX Emerald and its affiliates. MIAX Emerald competes with eight (8) non-Members, who resell MIAX Emerald connectivity. These are resellers of MIAX Emerald connectivity—they are not arrangements between broker-dealers to share connectivity costs, as SIFMA suggests. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX Emerald (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX Emerald does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX Emerald to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. In fact, there are currently seven (7) non-Members that purchase 1Gb direct connectivity that are able to access MIAX Emerald, MIAX and MIAX PEARL. Those non-Members resell that connectivity to eight (8) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eight (8) customers also purchase connectivity directly from MIAX Emerald and/or its affiliates, MIAX and MIAX PEARL. Accordingly, indirect connectivity is a viable alternative used by non-Members of MIAX Emerald, constraining the price that MIAX Emerald is able to charge for connectivity to its Exchange.

The Exchange,[21] MIAX,[22] and MIAX PEARL[23] are comprised of 41 distinct members amongst all three exchanges, excluding any additional affiliates of such members that are also members of the Exchange, MIAX, MIAX PEARL, or any combination thereof. Of those 41 distinct members, 28 of those distinct members are Members of MIAX Emerald. (Currently, there are no Members of MIAX Emerald that are not also members of MIAX or MIAX PEARL, or both.) Of those 28 distinct Members of MIAX Emerald, there are 6 Members that have no connectivity to the Exchange. Members are not forced to purchase connectivity to the Exchange, and these Members have elected not to purchase such connectivity. Of note, these same 6 Members also do not have connectivity to either MIAX or MIAX PEARL. These Members either trade indirectly through other Members or non-Members that have connectivity to the Exchange, or do not trade and conduct another type of business on the Exchange. Of the remaining 22 distinct Members of MIAX Emerald, *all 22* of those distinct Members already had connectivity to the Exchange via existing Shared Connections, thus providing all such 22 MIAX Emerald Members with instant connectivity to the Exchange without paying any new incremental connectivity fees.

Further, of those 22 Members, 14 of such Members elected to purchase additional connectivity to the Exchange, including additional Shared Connections and additional Dedicated Connections. The Exchange made available in advance to all of its prospective Members its proposed connectivity pricing (subject to regulatory clearance), in order for those prospective Members to make an informed decision about whether to become a Member of the Exchange and whether to purchase connectivity to the Exchange. Accordingly, each such Member made the decision to become a Member of the Exchange and to purchase connectivity to the Exchange, knowing in advance the connectivity pricing. And the vast majority of the additional connectivity purchased by those Members were for Dedicated Connections, the most expensive connectivity option.

As a result, of those 22 Members, through existing Shared Connections, newly purchased Shared Connections, and newly purchased Dedicated Connections: 14 Members have 1Gb (primary/secondary) connections; 13 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 10 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections. All such Members with those Shared Connections and Dedicated Connections trade on MIAX Emerald.

The 6 Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 6 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

In addition, there are 5 non-Member service bureaus that already have connectivity to the Exchange via existing Shared Connections, thus providing all 5 of those non-Member service bureaus with instant connectivity to the Exchange without paying any new incremental connectivity fees. These non-Members freely purchased their connectivity from one of the Exchange's affiliates, either MIAX or MIAX PEARL, in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options.

The Exchange believes that the Proposed Fees are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers two direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX Emerald recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb ULL direct connectivity alternative. Because it is 1/

[21] The Exchange has 28 distinct Members, excluding affiliated entities. *See* MIAX Emerald Exchange Member Directory, available at *https://www.miaxoptions.com.*

[22] MIAX has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com.*

[23] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com.*

10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Thus, the value of the 1Gb alternative is much lower than value of a 10Gb ULL alternative, when measured based on the type of Exchange access it offers, which is the basis for difference in price between a 1Gb connection and a 10Gb ULL connection. Approximately just less than half of MIAX Emerald, MIAX and MIAX PEARL Members that connect (15 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Exchange believes the allocation of the Proposed Fees ($6,000 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the network resources consumed by the market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange.

The Exchange launched trading on March 1, 2019. Thus, at the time that the 14 Members who elected to purchase connectivity to the Exchange, the Exchange was untested and unproven, and had 0% market share of the U.S. options industry. For May 2019, the Exchange had only a 0.77% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[24] For May 2019, the Exchange's affiliate, MIAX, had only 3.75% market share of the U.S. options industry in May 2019 in Equity/ETF classes according to the OCC.[25] For May 2019, the Exchange's affiliate, MIAX PEARL, had only 4.8% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[26] The Exchange is not aware of any evidence that a combined market share less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition. Certainly, an untested and unproven exchange, with less than 1% market share in any month, and no rule or requirement that a market participant must join or connect to it, does not have anti-competitive pricing power, with respect to setting the pricing for the Dedicated Connections or the Shared Connections. If the Exchange were to attempt to establish unreasonable connectivity pricing, then no market participant would join or connect. Therefore, since 28 distinct Members joined MIAX Emerald and 14 of those distinct Members purchased additional connectivity to the Exchange, all knowing, in advance, the connectivity fees, the Exchange believes the Proposed Fees are reasonable, equitable, and not unfairly discriminatory.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX Emerald must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants are proposing to access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 34 total Members (including all such Members' affiliate Members).

However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[27] Nasdaq ISE, LLC has approximately 100 members,[28] and NYSE American LLC has over 80 members.[29] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 34 Members.

Further, since there are 41 distinct members amongst all three exchanges, and only 28 of those distinct members decided to become Members of MIAX Emerald, there were 13 distinct members that decided *not* to become Members of MIAX Emerald. This further reinforces the fact that all market participants are not required to be Members of the Exchange and are not required to connect to the Exchange. It is a choice whether to join and it is a choice to connect. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

With respect to the now MIAX Emerald Members that had Shared Connections in place as of August 1, 2018 (via a previously purchased Shared Connection from MIAX or MIAX PEARL), the Exchange finds it compelling that all of those Members continued to purchase those Shared Connections after August 1, 2018, when MIAX and MIAX PEARL increased the connectivity fees for the Shared Connections to the current amounts proposed by the Exchange herein. In particular, the Exchange believes that the Proposed Fees for the Shared Connections are reasonable because MIAX and MIAX PEARL, which charge the same amount for the Shared Connections, did not lose any Members (or the number of Shared Connections each Member purchased) or non-Member Shared Connections when MIAX and MIAX PEARL proposed to increase the connectivity fees for the Shared Connections on August 1, 2018. For example, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, 12 Members purchased 1Gb connections. The vast majority of those Members purchased multiple such

[24] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[25] *Id.*

[26] *Id.*

[27] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[28] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[29] *See https://www.nyse.com/markets/american-options/membership#directory.*

connections, the number of connections depending on their throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same 12 Members purchased 1Gb connections. Furthermore, the total number of connections did not decrease from July to August.

Further, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when MIAX and MIAX PEARL increased its fees. Furthermore, the Exchange understands that MIAX and MIAX PEARL did not receive any official comment letters or complaints from any now Members of MIAX Emerald who had Shared Connections in place as of July 2018 regarding the increased fees regarding how the change was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges, demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fees are equitably allocated among Members and non-Members, as evidenced by the fact that the fees are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative –14 Members have 1Gb (primary/secondary) connections; 14 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 11 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections. Further, the Exchange believes that the fees are reasonably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange's network. It is these firms that account that also account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 80% of the volume on the Exchange. For example, in June of 2019, to date, 3.1 million contracts of the 3.8 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume. The Exchange considered whether to increase transaction fees and other fees in order to offset its costs as an alternative to establishing connectivity fees, however, the Exchange determined that establishing its connectivity fees was the only viable alternative. This is because the costs are more closely associated with connectivity, as well as the intense level of competition among the options exchanges for order flow through transaction fees.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fees will permit recovery of the Exchange's costs and will not result in excessive or supracompetitive profit. The Proposed Fees will allow the Exchange to recover a portion (less than all) of the costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

The costs associated with making the network accessible to Exchange Members and non-Members, through the expansion associated with new Shared Connections and Dedicated Connections, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year in the past two years, and are projected to increase year-over-year in the future. This is due to several factors, including costs associated with maintaining and expanding a team of highly-skilled network engineers, fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development (''R&D'') efforts.

In order to provide more detail and to quantify the Exchange's costs, the Exchange notes that costs are associated with the infrastructure and headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. Additionally, the Exchange incurred costs in the expansion/buildout of the network leading up to the launch of operations, and the network maintenance costs continue to increase year-over-year. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX Emerald and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, cost to MIAX Emerald and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX Emerald and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million.

A more detailed breakdown of the expense increases since the initial phases of the buildout of the Exchange over two years ago include the following: With respect to the network, there has been an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee cost, this is the cost associated with MIAX Emerald consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX Emerald to effectively pay its competitors for this connectivity.

There was also significant capital expenditures over this same period to upgrade and enhance the underlying technology components. The Exchange

believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with the buildout, maintenance, and enhancement of its network infrastructure.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset costs such costs.

Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The Exchange also incurs costs associated with the maintenance and improvement of existing tools and the development of new tools.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. As an example, in the last year, R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that also increases year-over-year, and thus the Exchange believes that it is reasonable to offset a portion of those costs through establishing network connectivity fees, as proposed herein. Overall, the Proposed Fees are projected to offset only a portion of the Exchange's network connectivity costs. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 audited financial statements which will be publicly available as part of the Exchange's Form 1 Amendment, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fees are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the total annual expense of the Exchange associated with providing the network connectivity services versus the total annual revenue of the Exchange associated with providing the network connectivity services. For 2018, the annual expense associated with the provision of the network connectivity services for MIAX Emerald was approximately $3.7 million. This amount is comprised of both direct and indirect expense. The direct expense (which relates 100% to the network infrastructure, associated data center processing equipment required to support various connections, network monitoring systems and associated software required to support the various forms of connectivity) was approximately $1.2 million (constituting primarily the Information Technology expense in the Exchange's 2018 financial statements). The indirect expense (which includes expense from such areas as trading operations, software development, business development, information technology, marketing, human resources, legal and regulatory, finance and accounting) that the Exchange allocates to the development, maintenance and support of network connectivity services was approximately $2.5 million. This indirect expense of $2.5 million represents approximately 20% of total annual expense of MIAX Emerald for 2018 of approximately $13.5 million, less direct expense of $1.2 million ($13.5 million less $1.2 million equals $12.3 million multiplied by 20% equals $2.5 million). The Exchange projects that its expenses for 2019 will be slightly higher than they were in 2018, as the Exchange went into operation in 2019 and thus required additional resources and services. For 2019, the annual expense associated with the provision of the network connectivity services for MIAX Emerald is projected to be approximately $5.5 million, consisting of $2.5 million in direct expense and $3 million in indirect expense.

Total revenue of the Exchange associated with selling the network connectivity services for MIAX Emerald in 2018 was $0, as the Exchange did not commence operations until March 2019. Total projected revenue of the Exchange associated with selling the network connectivity services for MIAX Emerald is projected to be approximately $2.5 million for 2019 (reflecting 10 full months of operation). This $2.5 million in revenue represents approximately 25% of total projected net revenue of MIAX Emerald for 2019, of approximately $9.7 million. The Exchange believes that an indirect expense allocation of 20% of total expense (less direct expense) to network connectivity services is fair and reasonable, as total projected network connectivity revenue for 2019 represents approximately 25% of total projected net revenue for 2019, and the Exchange's affiliates, MIAX and MIAX PEARL, utilize a 20% expense allocation for their network connectivity fees. That is, for 2018, direct expense of $1.2 million plus indirect expense of $2.5 million fairly reflects the total annual expense associated with providing the network connectivity services in 2018. For 2019, direct expense of $2.5 million plus indirect expense of $3 million fairly reflects the total projected annual expense associated with providing the network connectivity services in 2019. The Exchange believes that this is a conservative allocation of indirect expense. Accordingly, the total projected MIAX Emerald connectivity revenue for 2018 of $0 is less than total annual actual MIAX Emerald connectivity expense for 2018 of $3.7 million. Further, the total projected MIAX Emerald connectivity revenue for 2019 of $2.5 million is less than total projected MIAX Emerald connectivity

expense for 2019 of $5.5 million. Accordingly, the Proposed Fees are fair and reasonable because they do not result in excessive pricing or supracompetitive profit, when comparing the network connectivity costs to the Exchange versus the network connectivity annual revenue. Additional information on Exchange revenue and expense can be found in the Exchange's 2018 audited financial results, which will be publicly available as part of the Exchange's Form 1 filed with the Commission by June 30, 2019.

The Exchange also believes its proposal to offer 10Gb ULL connections as dedicated connections furthers the objectives of Section 6(b)(5) of the Act [30] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. In particular, for the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect. A dedicated 10Gb ULL connection does not offer any unfair advantage over a shared 10GB ULL connection, as is being offered solely as a cost-saving measure to the Exchange and its Members.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[31] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities,[32] however the Exchange also notes that the Exchange's 10Gb ULL connection is dedicated solely to one market (the Exchange) whereas the Exchange believes that other exchanges offer a shared 10Gb ULL connection to multiple markets. While MIAX Emerald's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX Emerald believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX Emerald believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[33]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fees are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

The Exchange believes that the Proposed Fees do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of the Exchange as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. Additionally, the Exchange other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[34] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange,

[30] 15 U.S.C. 78f(b)(5).

[31] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[32] *Id.*

[33] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[34] *See supra* note 31.

the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[35] and Rule 19b–4(f)(2)[36] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2019–24 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–EMERALD–2019–24. 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–EMERALD–2019–24 and should be submitted on or before August 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15026 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

[35] 15 U.S.C. 78s(b)(3)(A)(ii).

[36] 17 CFR 240.19b–4(f)(2).

[37] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Thursday, July 18, 2019.

**PLACE:** The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 11, 2019.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2019–15158 Filed 7–12–19; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*

Rule 17a–8, SEC File No. 270–225, OMB Control No. 3235–0235

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 17a–8 (17 CFR 270.17a–8) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–1 *et seq.*) is entitled ''Mergers of affiliated

companies.'' Rule 17a–8 exempts certain mergers and similar business combinations (''mergers'') of affiliated registered investment companies (''funds'') from prohibitions under section 17(a) of the Act (15 U.S.C. 80a–17(a)) on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a–8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 468 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 3,276 hours.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be $15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be $100,000. The Commission staff estimates that each year approximately 0 mergers with unregistered entities occur and approximately 137 funds hold shareholder votes that would not otherwise have held a shareholder vote. The total annual cost burden of meeting these requirements is estimated to be $13,700,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. 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 public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, co Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 11, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15046 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–86348; File No. SR–CboeBZX–2019–044]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust To Hold Certain Instruments in a Manner That May Not Comply With Rule 14.11(i), Managed Fund Shares

July 10, 2019.

On May 15, 2019, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust to hold certain instruments in a manner that may not comply with BZX Rule 14.11(i), Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on June 3, 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 July 18, 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 September 1, 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 Number SR–CboeBZX–2019–044).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–15029 Filed 7–15–19; 8:45 am]

**BILLING CODE 8011–01–P**

## 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 staff will hold a public roundtable on Thursday, July 18, 2019 at 12:30 p.m. ET.

**PLACE:** The roundtable will be held in the Auditorium at the Commission's headquarters, 100 F Street NE, Washington, DC.

**STATUS:** The meeting will begin at 12:30 p.m. ET and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

**MATTERS TO BE CONSIDERED:** The Commission staff will host a roundtable on short-term/long-term management of public companies, our periodic reporting system and regulatory requirements. The roundtable is open to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85948 (May 28, 2019), 84 FR 25579.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

the public and the public is invited to submit written comments. This Sunshine Act notice is being issued because a majority of the Commission may attend the roundtable.

The agenda for the roundtable will focus on the impact of short-termism on our capital markets and whether our reporting system, or other aspects of our regulations, should be modified to address these concerns.

**CONTACT PERSON FOR MORE INFORMATION:** For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 11, 2019.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2019–15157 Filed 7–12–19; 11:15 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15982 and #15983; ARKANSAS Disaster Number AR–00104]**

### Presidential Declaration Amendment of a Major Disaster for the State of Arkansas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 3.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4441–DR), dated 06/08/2019.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 05/21/2019 through 06/14/2019.

**DATES:** Issued on 07/03/2019.

*Physical Loan Application Deadline Date:* 08/07/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/09/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Arkansas, dated 06/08/2019, is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Lincoln

All counties contiguous to the above named county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2019–15002 Filed 7–15–19; 8:45 am]

**BILLING CODE 8026–03–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16029 and #16030; ARKANSAS Disaster Number AR–00105]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Arkansas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–4441–DR), dated 07/03/2019.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 05/21/2019 through 06/14/2019.

**DATES:** Issued on 07/03/2019.

*Physical Loan Application Deadline Date:* 09/03/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/03/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 07/03/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Conway, Crawford, Desha, Faulkner, Franklin, Jefferson, Logan, Perry, Pulaski, Searcy, Sebastian, Yell

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere ..... | 2.750 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 2.750 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 2.750 |

The number assigned to this disaster for physical damage is 16029B and for economic injury is 160300.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2019–15001 Filed 7–15–19; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF STATE

**[Public Notice: 10819]**

### 30-Day Notice of Proposed Information Collection: Office of Language Services Contractor Application

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to August 15, 2019.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests

for copies of the proposed collection instrument and supporting documents, to Wanda Lyles Howell, who may be reached on 202–261–8791 or at *lyleswm2@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Office of Language Services Contractor Application Form.
- *OMB Control Number:* 1405–0191.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, A/OPR/LS.
- *Form Number:* DS–7651.
- *Respondents:* General public applying for translator and/or interpreter contract positions.
- *Estimated Number of Respondents:* 1,000.
- *Estimated Number of Responses:* 1,000.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 500 annual hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The information collected is necessary to ascertain whether respondents are valid interpreting and/or translating candidates, based on their work history and legal work status in the United States. If candidates successfully become contractors for the U.S. Department of State, Office of Language Services, the information collected is used to initiate security clearance background checks and for processing payment vouchers. Respondents are typically members of the public with varying degrees of experience in the fields of interpreting and/or translating.

**Methodology**

The Office of Language Services makes the ''Office of Language Services Contractor Application Form'' available via its internet site. Respondents can submit the form via email.

**Katherine H. Yemelyanov,**

*Acting Director.*

[FR Doc. 2019–15042 Filed 7–15–19; 8:45 am]

**BILLING CODE 4710–24–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. USTR–2019–0009]**

## Initiation of a Section 301 Investigation of France's Digital Services Tax

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of initiation of investigation, public hearing, and request for comments.

**SUMMARY:** The U.S. Trade Representative (Trade Representative) is initiating an investigation with respect to the Digital Services Tax (DST) under consideration by the Government of France. The Section 301 Committee will hold a public hearing and is seeking public comments in connection with this investigation.

**DATES:**

*July 10, 2019:* The Trade Representative initiated the investigation with respect to the French DST.

*August 12, 2019 at noon EDT:* Deadline for filing requests to appear at the August 19, 2019 public hearing, and for filing written version of your oral testimony.

*August 19, 2019 at noon EDT:* To be assured of consideration, written comments must be submitted by this date.

*August 19, 2019:* The 301 Committee will convene a public hearing at 9:30 a.m. in Rooms 1 and 2, 1724 F Street NW, Washington, DC 20508.

*August 26, 2019:* Due date for filing post-hearing submissions.

**ADDRESSES:** You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in section IV and V. The docket number is USTR–2019–0009. For issues with on-line submissions, please contact the Office of the United States Trade Representative (USTR) Section 301 line at (202) 395–5725.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning the submission of written comments or participating in the public hearing, please contact the Office of the United States Trade Representative (USTR) Section 301 line at (202) 395–5725. For all other questions concerning the investigation, please contact the USTR Section 301 line or Kate Hadley, Assistant General Counsel at (202) 395–4959, Robert Tanner, Director, Services and Investment, (202) 395–6125, or Michael Rogers, Trade Policy Analyst, Europe and the Middle East, (202) 395–2684.

**SUPPLEMENTARY INFORMATION:**

**I. The Digital Services Tax**

On March 6, 2019, the Government of France released a proposal for a 3% levy on revenues that certain companies generate from providing certain digital services to, or aimed at, French users (the Digital Services Tax, or the DST). On June 26, a joint committee of the two houses of the French Parliament agreed to a joint committee DST bill. On July 4, the French National Assembly passed the DST bill. The French Senate is expected to take up the bill on July 11.

Under the joint committee bill, the DST applies to revenues generated from certain ''digital interface'' services (*e.g.,* e-marketplaces for goods and services) and certain internet advertising services. Certain services that would otherwise be covered are excluded, including digital interfaces for the delivery of ''digital content.'' The tax applies only to companies with annual revenues from the covered services of at least €750 million globally and €25 million in France. The DST applies to gross revenues from providing the covered services to, or aimed at, French individuals, not to income. Many of the companies likely to be covered are not domiciled in France and have no permanent establishment there. Under current international tax rules, these companies do not pay—or expect to pay—taxes to France on the revenue they earn by providing services to, or aimed at, French individuals. The tax applies retroactively beginning January 1, 2019. Available evidence, including statements by French officials, suggest that France expects the tax to target certain large, U.S.-based tech companies.

**II. Initiation of Section 301 Investigation**

Section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act),

authorizes the United States Trade Representative (Trade Representative) to initiate an investigation to determine whether an act, policy, or practice of a foreign country is actionable under section 301 of the Trade Act. Actionable matters under section 301 include, *inter alia,* acts, polices, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce. An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

Pursuant to section 302(b)(1)(B), USTR has consulted with the appropriate advisory committees. USTR also has consulted with the inter-agency Section 301 Committee. In light of concerns with France's DST policy, as set out in the joint committee bill, the Trade Representative initiated a Section 301 investigation on July 10, 2019. Pursuant to section 303(a) of the Trade Act, the Trade Representative has requested consultations with the Government of France.

Pursuant to section 304 of the Trade Act, the USTR must determine whether the act, policy, or practice under investigation is actionable under Section 301. If that determination is affirmative, the USTR must determine what action to take.

The investigation initially will focus on the following concerns with the DST, as reflected in the joint committee bill.

(1) *Discrimination:* Available evidence, including statements by French officials, indicates that the DST will amount to *de facto* discrimination against U.S. companies. For example, the revenue thresholds have the effect of subjecting to the DST larger companies—which, in the covered sectors, tend to be U.S. companies—while exempting smaller companies, particularly those that operate only in France.

(2) *Retroactivity:* The DST would be a substantively new tax that applies retroactively to January 1, 2019. This feature calls into question the fairness of the DST. Further, since the tax is retroactive, companies covered by the DST may not track the data necessary to calculate their potential liability back to the beginning of 2019.

(3) *Unreasonable tax policy:* The DST appears to diverge from norms reflected in the U.S. tax system and the international tax system in several respects. These apparent departures include: Extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success.

In addition to these areas of concern with the DST, interested parties are invited to raise other aspects that may warrant a finding that the French DST is actionable under Section 301.

## III. Request for Public Comments

Interested persons are invited to submit written comments or oral testimony on any issue covered by the investigation. In particular, USTR invites comments with respect to:

- Concerns with the French digital services tax, as set out in the joint committee bill or as subsequently modified or adopted by the Government of France, including the specific concerns identified above;
- Whether the French DST is unreasonable or discriminatory;
- The extent to which the French DST burdens or restricts U.S. commerce;
- Whether the French DST is inconsistent with France's obligations under the WTO Agreement or any other international agreement; and
- The determinations required under section 304 of the Trade Act, including what action, if any, should be taken.

## IV. Hearing Participation

The Section 301 Committee will convene a public hearing at the Office of the U.S. Trade Representative, located at 1724 F Street NW, Washington, DC 20508, Rooms 1 and 2, beginning at 9:30 a.m. on August 19, 2019. You must submit requests to appear at the hearing by August 12, 2019. The request to appear should include a written version of the testimony you expect to give. Remarks at the hearing may be no longer than five minutes to allow time for questions from the Section 301 Committee.

All submissions must be in English and sent electronically via *www.regulations.gov.* To submit a request to appear at the hearing via *www.regulations.gov,* enter docket number USTR–2019–0009. In the ''type comment'' field, include the name, address, email address, and telephone number of the person presenting the testimony. Attach testimony, and a pre-hearing submission if provided, by using the ''upload file'' field. USTR strongly prefers submissions in Adobe Acrobat (.pdf). The file name should include the name of the person who will be presenting the testimony. In addition, please submit a request to appear by email to *301DST@ustr.eop.gov.* In the subject line of the email, please include the name of the person who will be presenting the testimony, followed by 'Request to Appear'. Please also include the name, address, email address, and telephone number of the person who will be presenting testimony in the body of the email message.

## V. Procedures for Written Submissions

All submissions must be in English and sent electronically via *www.regulations.gov.* To submit comments via *www.regulations.gov,* enter docket number USTR–2019–0009. Find a reference to this notice and click on the link entitled ''comment now!'' For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on ''how to use *regulations.gov*'' on the bottom of the *www.regulations.gov* home page. We will not accept hand-delivered submissions.

The *www.regulations.gov* website allows users to submit comments by filling in a ''type comment'' field or by attaching a document using an ''upload file'' field. USTR prefers that you submit comments in an attached document. If you attach a document, it is sufficient to type ''see attached'' in the ''type comment'' field. USTR strongly prefers submissions in Adobe Acrobat (.pdf). If you use an application other than Adobe Acrobat or Word (.doc), please indicate the name of the application in the ''type comment'' field.

File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions containing business confidential information also must submit a public version of their

comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments. If these procedures are not sufficient to protect business confidential information or otherwise protect business interests, please contact the USTR Section 301 line at (202) 395–5725 to discuss whether alternative arrangements are possible.

USTR will post submissions in the docket for public inspection, except business confidential information. You can view submissions on the *https://www.regulations.gov* website by entering docket number USTR–2019–0009 in the search field on the home page.

**Joseph Barloon,**

*General Counsel, Office of the U.S. Trade Representative.*

[FR Doc. 2019–15081 Filed 7–15–19; 8:45 am]

**BILLING CODE 3290–F9–P**

## DEPARTMENT OF TRANSPORTATION

### NextGen Advisory Committee (NAC); Notice of Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the NextGen Advisory Committee (NAC).

**DATES:** The meeting will be held on July 30, 2019, from 9 to 12:30 p.m. EDT.

Requests for accommodations to a disability must be received by July 16, 2019.

Requests to speak during the meeting must submit a written copy of their remarks to FAA by 4:00 p.m. on July 16, 2019.

Requests to submit written materials to be reviewed during the meeting must be received no later than 4:00 p.m. on July 16, 2019.

**ADDRESSES:** The meeting will be held at The MITRE Corporation, MITRE 1 Building Conference Center: 7525 Colshire Drive, McLean, VA 22102. Copies of the meeting minutes will be available on the NAC internet website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/*. Any committee related request should be sent to the person listed in the following section.

**FOR FURTHER INFORMATION CONTACT:** Greg Schwab, NAC Coordinator, U.S. Department of Transportation, at *gregory.schwab@faa.gov* or 202–267–1201. Also, visit the NAC website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The NAC was created under the Federal Advisory Committee Act (FACA), in accordance with the provisions of the FACA as amended, Public Law 92–463, 5 U.S.C. App to provide independent advice and recommendations to the FAA and to respond to specific taskings received directly from the FAA. The NAC recommends consensus-driven standards for FAA consideration relating to Air Traffic Management System modernization.

#### II. Agenda

At the July 30, 2019, meeting, the agenda will cover the following topics:

- Official Statement of Designated Federal Official
- NAC Chairman's Report
- FAA Report
  - FAA Reauthorization
- NAC Subcommittee Chairman's Report
  - NAC NextGen Priority Focus Area Updates
- Domestic ADS–B Out Equipage Status Update
- Recommendations
- NAC Chairman Closing Comments

A final agenda will be posted on the NAC website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/* at least one week in advance of the meeting.

#### III. Public Participation

The meeting will be open to the public on a first come, first served basis, as space is limited. Members of the public who wish to attend in-person are asked to register via email by submitting your full legal name, country of citizenship, and name of your industry association, or applicable affiliation, to *NACRegistration@concept-solutions.com* by July 10, 2019. For Foreign National attendees, please also provide your company/organization country.

Individuals requesting accessibility accommodations, such as sign language, interpretation, or other ancillary aids, may do so by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT** by July 10, 2019.

Five (5) minutes total time will be allotted during the meeting for all oral comments from members of the public in attendance. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to NAC members. All prepared remarks submitted on time will be considered as part of the record.

Persons who wish to only submit written comments to the NAC may do so. All written comments submitted on time will be reviewed and considered for inclusion as part of the record. Comments received after the due date and time will be distributed to the members but may not be reviewed prior to the meeting.

Copies of the meeting minutes will be available on the NAC website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/*.

Dated: July 11, 2019.

**Tiffany Ottilia McCoy,**

*General Engineer, NextGen Office of Collaboration and Messaging, ANG–M, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.*

[FR Doc. 2019–15041 Filed 7–15–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket No. NHTSA–2019–0019]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Prevalence of Alcohol and Other Drug Use Among Motor Vehicle Crash Victims Admitted to Select Trauma Centers.

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice and request for comments on a new information collection.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** notice with a 60-day comment

period soliciting comments on the information collection was published on April 24, 2019. NHTSA received one comment, from the National Transportation Safety Board (NTSB), that was supportive of the proposed information collection.

**DATES:** Comments must be received on or before August 15, 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 NHTSA, 725 17th Street NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Amy Berning, Contracting Officer's Representative, NHTSA–NPD–130, 1200 New Jersey Avenue SE, W44–237, Washington, DC 20590. Ms. Berning's phone number is 202–366–5587, and her email address is *amy.berning@dot.gov*.

**SUPPLEMENTARY INFORMATION:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB.

A **Federal Register** notice with a 60-day comment period soliciting comments on the information collection was published on April 24, 2019.[1] NHTSA received one comment,[2] from the NTSB, that was supportive of the information collection. NTSB stated that it found the proposed collection of information to be necessary, proper, and useful; the methodology to be valid; the quality and clarity of the proposed collected information to be appropriate; and the collection techniques to be suitable. The comment expressed NTSB's support for NHTSA's research efforts to better understand the prevalence of alcohol and other drug use among crash victims admitted to selected trauma centers and morgues and stated that NHTSA's work on drugs and driving is crucial to NHTSA's proper performance of its agency functions, particularly addressing the safety hazards caused by driver impairment. In further support, NTSB referenced its own safety recommendation to NHTSA to develop and disseminate a common standard of practice for drug toxicology testing.[3] NTSB also noted that because the blood specimens will be left over from those already drawn and used for medical care and that demographic data will be deidentified, there will be no evident burden placed on the public or the individuals involved in the research. NHTSA is not making any changes to the information collection based on the comment received.

*Title:* Prevalence of Alcohol and Other Drug Use Among Motor Vehicle Crash Victims Admitted to Select Trauma Centers.

*OMB Control Number:* 2127—New.

*Affected Public:* Seriously- or fatally-injured victims of motor vehicle crashes presenting directly to the selected trauma centers or morgues shortly after a crash.

*Form Number:* No forms.

*Abstract:* The National Highway Traffic Safety Administration (NHTSA) seeks to examine the prevalence of legal and illegal drugs in the systems of seriously- and fatally-injured drivers and other crash-involved road users (*e.g.,* passengers, pedestrians, bicyclists, and scooter riders) presenting directly to the selected trauma centers or morgues. The participating trauma centers and medical examiners will provide the study with de-identified blood samples, when available, that were already collected during their routine clinical treatment activities. The study will then conduct independent drug toxicology testing to determine the prevalence of alcohol and other drugs in the systems of the participants. The trauma centers and medical examiners will also provide the study with other de-identified participant classification information such as patient demographics, cause of injury, and injury severity. The trauma centers and medical examiners will provide this already-collected and de-identified information to the study in accordance with all applicable Federal, State, and local regulations governing the sharing of such information and as approved by the study IRB. The trauma centers and medical examiners at the selected study sites universally draw patients' blood for clinical treatment or autopsy purposes. The trauma centers and medical examiners also collect other information such as patient demographics, cause of injury, injury severity, and drugs administered during treatment as part of their normal operating procedures. Therefore, there is no estimated time burden on the participants as the trauma centers and medical examiners will be providing the study with de-identified blood samples already collected, but not used, during their routine clinical procedures, and other de-identified information that was already collected as part of their routine clinical documentation procedures.

*Total Estimated Annual Burden Hours:* 0.00 hours per year.

*Estimated Number of Respondents:* The study anticipates collecting de-identified information on approximately 7,500 seriously- or fatally-injured victims of crashes.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

Issued in Washington, DC.

**Jon Krohmer,**

*Associate Administrator, Acting, Research and Program Development.*

[FR Doc. 2019–15033 Filed 7–15–19; 8:45 am]

**BILLING CODE 4910–59–P**

[1] 84 FR 17233.

[2] The docket number for the 60-day notice was mistakenly used twice, and the docket also included nine comments that were related to a shoulder belt requirement for side-facing seats on motorcoaches.

[3] See the NTSB's November 21, 2012, letter to NHTSA issuing Safety Recommendations H–12–32 and –33. Safety Recommendation H–12–33 is classified ''Open—Acceptable Response.''

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for modification of special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before July 31, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 2, 2019.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

## SPECIAL PERMITS DATA

| Application number | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| 4661–M | ALBEMARLE U.S. INC | 180.205(b), 180.205(c), 180.205(f), 180.205(g), 180.213. | To modify the special permit to authorize additional Class 3 hazmat. (modes 1, 2, 3) |
| 8451–M | AUTOLIV ASP, INC | 172.320, 173.54(a), 173.54(j), 173.56(b), 173.57, 173.58, 173.60. | To modify the special permit to increase the weight of the explosives. (modes 1, 2, 4) |
| 9998–M | ACCUMULATORS, INC | 173.302(a) | To modify the permit to add a new line of piston-type hydropneumatic accumulators (to the currently permitted bladder-type accumulators). (modes 1, 2, 3, 4) |
| 10915–M | LUXFER INC | 172.203(a), 172.301(c), 173.302a(a)(1), 173.304a(a)(1), 180.205. | To modify the special permit to authorize a change to the marking requirements of CFFC–14(b)(ii). (modes 1, 2, 3, 4, 5) |
| 14298–M | VERSUM MATERIALS, LLC | 180.209(a), 180.209(b), 180.209(b)(1)(iv). | To modify the special permit to authorize the addition of tungsten hexafluoride as an authorized hazardous material. (modes 1, 2, 3) |
| 15130–M | SUNDANCE HELICOPTERS, INC. | 72.101(j)(1), 175.30(a) | To modify the special permit to authorize additional Class 2 hazardous materials. (mode 4) |
| 16518–M | MIDWEST HELICOPTER AIRWAYS. | 172.200, 172.301(c), 175.33 | To modify the special permit to add additional hazmat. (mode 4) |
| 16624–M | FRAMATOME INC | 173.301(a)(1), 173.302(a) | To modify the special permit to authorize non-DOT specification packaging for the safe containment of the compressed helium in certain of its non-Class 7 nuclear fuel component products. (mode 1) |
| 20323–M | Cuberg, Inc | 173.185(a)(1)(i) | To modify the special permit to authorize an additional outer packaging. (mode 4) |
| 20499–M | INMAR, INC | Subchapter C | To modify the special permit to change it from an MMS to an offer type permit. (modes 1, 2) |
| 20567–M | OMNI TANKER PTY. LTD | 107.503(b), 107.503(c), 172.102(c)(3), 172.203(a), 173.241, 173.242, 173.243, 178.345–1, 178.347–1, 178.348–1, 180.405, 180.413(d). | To modify the special permit to authorize additional cargo tank designs. (mode 1) |
| 20621–M | SIGMA-ALDRICH INTERNATIONAL GM. | 173.56(b), 173.224(c), 173.225(b). | To modify the special permit to authorize the use of a higher density expandable foam and to authorize a smaller package. (modes 1, 2, 3, 4, 5) |
| 20796–M | SODASTREAM USA INC | 172.400, 172.200, 172.300 | To modify the special permit to include IMDG and ICAO references. (modes 1, 2, 3) |
| 20883–M | DEPARTMENT OF THE ARMY (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND). | 173.302(a), 175.3 | To modify the permit to authorize party status. (modes 1, 3, 4) |

[FR Doc. 2019–15036 Filed 7–15–19; 8:45 am]

**BILLING CODE 4909–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before August 15, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 9, 2019.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| 20896–N | Applied Energy Systems, Inc | 172.101(j), 173.187, 173.212, 173.240, 173.242, 176.83. | To authorizes the transportation in commerce of a gas purification apparatus containing certain Division 4.2 (spontaneously combustible solids) in non-DOT specification stainless steel pressure vessels. (modes 1, 3, 4) |
| 20898–N | Rivian Automotive, LLC | 172.101(j), 173.185(a), 173.185(b)(3)(i), 173.185(b)(3)(ii). | To authorize the transportation in commerce of prototype and low production lithium ion batteries and batteries contained in vehicles aboard cargo-only aircraft. (mode 4) |
| 20899–N | CAIRE INC | 171.2(g), 172.203(a), 172.301(c), 173.22(a), 180.211(c)(2). | To authorize the repair of certain DOT 4L cylinders without requiring pressure testing. (modes 1, 2, 3, 4, 5) |
| 20900–N | AMETEK AMERON, LLC | 173.56(b), 173.302(a) | To authorize the manufacture, mark, sale, and use of non-DOT specification cylinders similar to DOT 3HT. (modes 1, 2, 3, 4, 5) |
| 20904–N | Piston Automotive, L.L.C | 172.101(j) | To authorize the transportation of lithium ion batteries exceeding 35 kg net weight by cargo-only aircraft. (mode 4) |
| 20905–N | POLLUTION CONTROL INC | 173.56(b) | To authorize the one-way transportation in commerce of waste explosive substances that had previously been approved. (mode 1) |
| 20906–N | AKZO NOBEL FUNCTIONAL CHEMICALS LLC. | 173.28(b)(2), 173.181 | To authorize the transportation in commerce of the hazardous materials identified in paragraph 6 in certain UN 1A1 drums and the reuse of those UN1a! drums without leakproofness testing. (modes 1, 2, 3) |
| 20909–N | SMBC RAIL SERVICES LLC | 172.203(a), 172.302(c), 173.247 | To authorize the use of certain DOT 117 tank car tanks for the transportation in commerce of certain elevated temperature materials. (mode 2) |
| 20910–N | CELLBLOCK FCS, LLC | 172.200, 172.300, 172.500, 172.400, 172.700(a). | To authorize the manufacture, mark, sale, and use of UN 4G packaging for the transportation of damaged, defective, recalled lithium cells and batteries, including batteries contained in equipment, without being subject to certain hazard communication requirements. (mode 1, 3) |
| 20911–N | TEN–E PACKAGING SERVICES, INC | 173.308(b) | To authorize the testing of lighter designs using an alternative testing scheme. (modes 1, 2, 3, 4, 5) |
| 20913–N | Tiveni | 173.185(a) | To authorize the transportation in commerce of prototype lithium ion batteries by cargo-only aircraft. (mode 4) |

[FR Doc. 2019–15038 Filed 7–15–19; 8:45 am]

BILLING CODE 4909–60–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

**DATES:** Comments must be received on or before August 15, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 9, 2019.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| | | **SPECIAL PERMITS DATA—Granted** | |
| 11110–M | UNITED PARCEL SERVICE CO | 171.8, 175.75 | To modify the special permit to add additional air carriers. |
| 11859–M | CARLETON TECHNOLOGIES, INC | 173.301(f), 173.302a(a), 178.65 | To modify the special permit to update the tube welding test procedure to the most current production drawings. |
| 15110–M | KIDDE TECHNOLOGIES INC | 173.302, 173.302a | To modify the special permit to authorize additional part numbers (cylinders) to be added to the permit. |
| 15279–M | UNIVERSITY OF COLORADO AT BOULDER, EHS. | 172.301(a), 172.301(b), 172.301(c), 173.196(a), 173.196(b), 178.609. | To modify the special permit to authorize a new destination for the material transfer. |
| 16308–M | VERO BIOTECH LLC | 173.175 | To modify the special permit to clarify the packaging used description. |
| 20602–M | THE BOEING COMPANY | 173.56(b), 173.62, 173.185(a), 173.185(b), 173.201, 173.302(a), 173.304(a), 177.848(d). | To modify the special permit to authorize an additional hazmat. |
| 20602–M | THE BOEING COMPANY | 173.56(b), 173.62, 173.185(a), 173.185(b), 173.201, 173.302(a), 173.304(a), 177.848(d). | To modify the special permit to authorize any qualified carrier that is capable of transporting Dangerous Goods IAW 49 CFR. |
| 20709–M | DAIMLER AG | 172.101(j), 173.185(a) | To modify the special permit to authorize an increase in the battery and package weight. |
| 20816–N | AIR PRODUCTS AND CHEMICALS, INC | 178.274, 178.277 | To authorize the manufacture, mark, sale and use of portable tanks built to ASME Section XII specifications. |
| 20831–N | CYLINDER SALES AND TESTING, LLC | 180.209(a), 180.209(b), 180.209(b)(1)(iv) | To authorize the transportation in commerce of certain hazardous materials in DOT Specification 3AL cylinders manufactured from aluminum alloy 6061–T6 that are requalified every ten years rather than every five years using 100% ultrasonic examination. |
| 20862–N | CUMMINS INC | 172.101(j), 173.185(a) | To authorize the transportation in commerce of low production lithium ion batteries exceeding 35 kg by cargo-only aircraft. |
| 20864–N | SALMON RIVER HELICOPTERS, INC | 172.101(j), 172.200, 175.33 | To authorize the transportation in commerce of certain materials forbidden for transport via passenger-carrying aircraft or cargo-only aircraft. |
| 20871–N | CASTLE AVIATION, INC | 172.203(a), 175.700(b)(2)(ii), 175.701(a) | To authorize the transportation in commerce of Class 7 materials with a transport index greater than that which the HMR authorizes. |
| 20877–N | MEDIGREEN WASTE SERVICES LLC | 173.24(b) | To authorize the one time one way transportation of shipping containers which contain compromised packages of medical waste. |
| 20883–N | DEPARTMENT OF THE ARMY (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND). | 173.302(a), 175.3 | To authorize the transportation in commerce of argon in non-specification packaging. |
| 20885–N | KOREAN AIR LINES CO., LTD | 172.101(j), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1). | To authorize the transportation in commerce of certain explosives that are forbidden for transportation by cargo aircraft only. |
| 20890–N | KALITTA AIR, L.L.C | 172.101(j), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1). | To authorize the transportation in commerce of explosives by cargo aircraft. |
| 20902–N | EASTERN UPPER PENINSULA TRANSPORTATION AUTHORITY. | 176.164(e) | To authorize the transportation in commerce of certain Class 1 materials in motor vehicles aboard ferry vessels, which do not have two sets of breathing apparatus. |

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| | | **SPECIAL PERMITS DATA—Denied** | |
| 20323–M | Cummins Inc | 172.101(j) | To modify the special permit to increase the authorized net weight to 75 kg. |
| 20686–N | PETROLEUM HELICOPTER, INC | 172.101(j), 175.75(b), 175.700(a) | To authorize the transportation of Class 7 material aboard passenger-carrying aircraft. |
| 20836–N | ELCO CORPORATION | 173.35(e) | To authorize the transportation of certain hazmat where two or more closure systems are fitted in series, the system nearest to the hazardous material being carried must be closed first. |
| 20868–N | DYNO NOBEL INC | 176.164(e) | To authorize the transportation in commerce of Class 1 materials by vessel without having two sets of breathing apparatus and a power-operated fire pump. |
| 20878–N | Quality Blasting Services | 176.164(e) | To authorize the transportation in commerce of explosives by vessel where the vessel does not have the required sets of breathing apparatus and power operated pumps. |
| 20887–N | ERA HELICOPTERS, LLC | 172.101(j) | To authorize the transportation of lithium ion batteries aboard a passenger-carrying aircraft operating in a helicopter air ambulance configuration. |
| | | **SPECIAL PERMITS DATA—Withdrawn** | |
| 20888–N | AIRGAS USA, LLC | 173.3 | To authorize the emergency transportation in commerce of a 4AA480 cylinder of anhydrous ammonia which has a leaking cylinder valve. |
| 20894–N | AIRGAS USA, LLC | 173.3 | To authorize the transportation in commerce of a 3A480 cylinder of anhydrous ammonia with a leaking valve. |

[FR Doc. 2019–15037 Filed 7–15–19; 8:45 am]

**BILLING CODE 4909–60–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Action

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

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

### Notice of OFAC Action(s)

On June 21, 2019 OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Case IDs NICARAGUA–16056, NICARAGUA–15504, NICARAGUA–15503, NICARAGUA–15361

### Individuals:

1. PORRAS CORTES, Gustavo Eduardo; DOB 11 Oct 1954; POB Managua, Nicaragua; nationality Nicaragua; Gender Male (individual) [NICARAGUA] [NICARAGUA–NHRAA].

Designated pursuant to section 1(a)(iii) of Executive Order 13851 of November 27, 2018, ''Blocking Property of Certain Persons Contributing to the Situation in Nicaragua'' (E.O. 13851) for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007; and pursuant to section 1(a)(ii) of E.O. 13851 for being a leader of the Nicaraguan National Assembly, an entity that has, or whose members have, engaged in, actions or policies that undermine democratic processes or institutions in Nicaragua.

Designated pursuant to section 5(a)(2)(A) of the Nicaragua Human Rights and Anticorruption Act of 2018 (NHRAA), Public Law 15–335, for being a leader of the Nicaraguan National Assembly, an entity that has, or whose members have, engaged in, significant actions or policies that undermine democratic processes or institutions.

2. CASTILLO CASTILLO, Orlando Jose (a.k.a. CASTILLO, Orlando), Residencial Bolonia, Canal 2 1 Cuadra Al Sur 3 C Al Oeste, Managua, Nicaragua; DOB 02 Sep 1943; POB Esteli, Nicaragua; nationality Nicaragua; Gender Male; Passport C01713933 (Nicaragua) issued 24 Jul 2014 expires 24 Jul 2024; National ID No. 1610209430002G (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of E.O. 13851 for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007; and pursuant to section 1(a)(ii) of E.O. 13851 for being a leader of the Institute of Telecommunications and Postal Service (TELCOR), an entity that has, or whose members have, engaged in, actions or policies that threaten the peace, security, or stability of Nicaragua.

3. CASTRO GONZALEZ, Sonia, Villa Barcelona De La Embajada De Espana, 100 Metros Al Este Casa 17, Managua, Nicaragua; DOB 29 Sep 1967; POB Carazo, Nicaragua; nationality Nicaragua; Gender Female; Passport A00001526 (Nicaragua) issued 19 Nov 2018 expires 19 Nov 2028; National ID No. 0422909670000N (Nicaragua) (individual) [NICARAGUA] [NICARAGUA–NHRAA].

Designated pursuant to section 1(a)(iii) of E.O. 13851 for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007; and pursuant to section 1(a)(i)(A) of E.O. 13851 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, serious human rights abuse in Nicaragua.

Designated pursuant to section 5(a)(2)(A) of NHRAA for being a leader of Ministry of Health, an entity that has, or whose members have, engaged in, significant acts of violence

or conduct that constitutes a serious abuse or violation of human rights against persons associated with the protests in Nicaragua that began on April 18, 2018.

4. MOJICA OBREGON, Oscar Salvador (a.k.a. MOJICA OBREGON, Oscar); DOB 22 Nov 1955; POB Nicaragua; nationality Nicaragua; Gender Male; Passport A0006041 (Nicaragua) (individual) [NICARAGUA].

Designated pursuant to section 1(a)(iii) of E.O. 13851 for being an official of the Government of Nicaragua or having served as an official of the Government of Nicaragua at any time on or after January 10, 2007.

Dated: June 26, 2019.

**Andrea Gacki,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2019–14065 Filed 7–15–19; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC, on July 30, 2019 at 9:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, 202(c)(1)(B) (31 U.S.C. 3121 note). This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: July 10, 2019.

**Fred Pietrangeli,**

*Director (for Office of Debt Management).*

[FR Doc. 2019–15013 Filed 7–15–19; 8:45 am]

**BILLING CODE 4810–25–M**

# Reader Aids

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