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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2019–0618; Special Conditions No. 23–295–SC]

Special Conditions: Pilatus Aircraft Ltd., Model PC–12/47E Airplanes; Electronic Engine Control System Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Pilatus Aircraft Ltd., Model PC–12/47E airplane. This airplane will have a novel or unusual design feature associated with installation of an engine that includes an electronic engine control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 15, 2019.

The FAA must receive your comments by September 16, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0618 using any of the following methods:

☐ *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

☐ *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

☐ *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

☐ *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, AIR–691, Small Airplane Standards Branch, Policy & Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–3239; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The FAA has determined, in accordance with 5 U.S. Code §§ 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary because substantially identical special conditions have been subject to the public comment process in several prior instances such that the FAA is satisfied that new comments are unlikely. For the same reason, the FAA finds that good cause exists for making these special conditions effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

Special conditions No.	Company/airplane model
23–253–SC [1]	Diamond Aircraft Industries/Model DA–40NG.
23–267–SC [2]	Cirrus Design Corporation/Model SF50.
23–282–SC [3]	Pilatus Aircraft Ltd./Model PC–24.
23–292–SC [4]	Costruzioni Aeronautiche Tecnam S.P.A./Model P2012.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. The FAA asks that you send two copies of written comments.

The FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change these special conditions based on the comments received.

Background

On March 9, 2017, Pilatus Aircraft Ltd. (Pilatus) applied for FAA validation of its change to Type Certificate No. A78EU [5] for installation of an electronic engine control (EEC) system—commonly referred to as a full authority digital engine control (FADEC)—in the Model PC–12/47E airplane. The Model PC–12/47E is a normal category, metallic, pressurized, low-wing, monoplane that seats nine passengers and two flightcrew. A single Pratt & Whitney PT6E–67XP [6] engine driving a

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/1A102658468C62D386257950004D7183?OpenDocument.*

[2] *https://www.govinfo.gov/app/details/FR-2015-09-23/2015-24156/summary.*

[3] *https://www.govinfo.gov/app/details/FR-2017-07-17/2017-14936.*

[4] *https://www.federalregister.gov/documents/2019/04/26/2019-08476/special-conditions-costruzioni-aeronautiche-tecnam-spa-model-p2012-airplane-electronic-engine.*

[5] *See http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/0/019EED2BA802A848862583360061A683?OpenDocument&Highlight=a78eu.*

[6] As of this special condition publishing date, engine approval is in process. The final engine model number will be updated on Type Certification Data Sheet A78EU upon engine approval completion.

five bladed variable pitch constant speed Hartzell propeller powers the airplane. The airplane has retractable tricycle landing gear, a Honeywell Primus APEX avionics suite, and a maximum takeoff weight of 10,450 pounds.

The Model PC–12/47E is equipped with a single Pratt & Whitney PT6E–67XP that uses an EEC system instead of a traditional mechanical control system. Although the EEC is certificated with the engine, the installation of an EEC requires evaluation due to critical environmental effects and possible effects on or by other airplane systems such as indirect effects of lightning, radio interference with other airplane electronic systems, and shared engine, airplane data, and power sources.

Sections 23.1306, 23.1308, and 23.1309 contain requirements for evaluating the installation of complex systems, including electronic systems and critical environmental effects. However, the use of EECs for engines was not envisioned when § 23.1309 was published. The integral nature of these systems makes it necessary to ensure proper evaluation of the airplane functions, which may be included in the EEC, and that the installation does not degrade the EEC reliability approved under part 33 during engine type certification. Sections 23.1306(a) and 23.1308(a) apply to the EEC to ensure it remains equivalent to a mechanical only system, which is not generally susceptible to the High Intensity Radiated Fields (HIRF) and lightning environments.

In some cases, the airplane in which the engine is installed determines a higher classification than the engine controls are certificated for, requiring the EEC systems be analyzed at a higher classification. As of November 2005, EEC special conditions mandated the § 23.1309 classification for loss of EEC control as catastrophic for any airplane. This is not to imply an engine failure is classified as catastrophic, but that the EEC must provide an equivalent reliability to mechanical engine controls. In addition, §§ 23.1141(e) and 25.901(b)(2) provide the fault tolerant design requirements of turbine engine mechanical controls to the EEC and ensure adequate inspection and maintenance intervals for the EEC.

Part 23 did not envision the use of full authority EECs and lacks the specific regulatory requirements necessary to provide an adequate level of safety. Therefore, special conditions are necessary.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Pilatus must show that the Model PC–12/47E airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A78EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' In addition to the original type certification basis, the FAA has determined that the Model PC–12/47E must also comply with § 23. 905(d) as amended by amendment 23–59, § 23.1306 as amended by amendment 23–61, § 23.1308 as amended by amendment 23–57, and §§ 23.1309 and 23.1310 as amended by amendment 23–62.

If the Administrator finds that the applicable airworthiness regulations in part 23 do not contain adequate or appropriate safety standards for the Model PC–12/47E airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model PC–12/47E must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Novel or Unusual Design Features

The Model PC–12/47E airplane will incorporate the following novel or unusual design features:

The installation of an EEC system, which is the generic family of electrical/electronic engine control systems to include full authority digital engine controls, supervisory controls, and derivatives of these controls.

Discussion

This airplane makes use of an electronic engine control system instead of a traditional mechanical control system, which is a novel design for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. Mandating a structured assessment to determine potential installation issues mitigate concerns that the addition of an electronic engine control does not produce a failure condition not previously considered.

Applicability

These special conditions are applicable to the Model PC–12/47E airplane. Should Pilatus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on the Model PC–12/47E airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702; Pub. L. 113–53, 127 Stat. 584 (49 U.S.C. 44704) note.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Pilatus Aircraft Ltd. Model PC–12/47E airplanes.

Installation of Electronic Engine Control System

(a) For electronic engine control (EEC) system installations, it must be established that no single failure or malfunction or probable combinations of failures of EEC system components will have an effect on the system, as installed in the airplane, that causes the Loss of Power Control (LOPC) probability of the system to exceed those allowed in part 33 certification.

(b) Electronic engine control system installations must be evaluated for environmental and atmospheric conditions, including lightning and High Intensity Radiated Fields (HIRF). The EEC system lightning and HIRF

effects that result in LOPC should be considered catastrophic.

(c) The components of the installation must be constructed, arranged, and installed to ensure their continued safe operation between normal inspections or overhauls.

(d) Functions incorporated into any electronic engine control that make it part of any equipment, systems or installation whose functions are beyond that of basic engine control, and which may also introduce system failures and malfunctions, are not exempt from § 23.1309 and must be shown to meet part 23 levels of safety as derived from § 23.1309. Part 33 certification data, if applicable, may be used to show compliance with any part 23 requirements. If part 33 data is used to substantiate compliance with part 23 requirements, then the part 23 applicant must be able to provide this data for its showing of compliance.

Note: The term ''probable'' in the context of ''probable combination of failures'' does not have the same meaning as used for a safety assessment process. The term ''probable'' in ''probable combination of failures'' means ''foreseeable,'' or those failure conditions anticipated to occur one or more times during the operational life of each airplane.

Issued in Kansas City, Missouri, on August 9, 2019.

Pat Mullen,

Manager, Small Airplane Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–17571 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2019–0617; Special Conditions No. 23–294–SC]

Special Conditions: Pilatus Aircraft Ltd. Model PC–12/47E Airplanes; Autothrust System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Pilatus Aircraft Ltd. Model PC–12/47E airplane. This airplane will have a novel or unusual design feature associated with the use of an autothrust system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 15, 2019.

The FAA must receive your comments by September 16, 2019

ADDRESSES: Send comments identified by docket number FAA–2019–0617 using any of the following methods:

☐ *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

☐ *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

☐ *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

☐ *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, AIR–691, Small Airplane Standards Branch, Policy & Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–3239; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The FAA has determined, in accordance with 5 U.S. Code §§ 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary because substantially identical special conditions have been subject to the public comment process in several prior instances such that the FAA is satisfied that new comments are unlikely. For the same reason, the FAA finds that good cause exists for making these special conditions effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

Special conditions No.	Company/airplane model
23–291–SC [1]	Innovation Solutions & Support, Inc.; Textron Aviation, Inc./ Model B200.
23–283–SC [2]	Pilatus Aircraft Ltd./Model PC–24.
23–272–SC [3]	Cirrus Aircraft Corporation/Model SF–50.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. The FAA asks that you send two copies of written comments.

The FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change these special conditions based on the comments received.

Background

On March 9, 2017, Pilatus Aircraft Ltd. (Pilatus) applied for FAA validation of its change to Type Certificate No. A78EU [4] for installation of an autothrust system (ATS)—also known as an autothrottle system—in the Model PC–12/47E airplane. The Model PC–12/47E is a normal category, metallic, pressurized, low-wing, monoplane that seats nine passengers and two flightcrew. A single Pratt & Whitney

[1] *https://www.federalregister.gov/d/2018-28116.*

[2] *https://www.federalregister.gov/d/2017-14938.*

[3] *https://federalregister.gov/a/2015-31058.*

[4] *See http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/0/EED2BA802A848862583360061A683?OpenDocument&Highlight=a78eu.*

PT6E–67XP [5] engine driving a five bladed variable pitch constant speed Hartzell propeller powers the airplane. The airplane has retractable tricycle landing gear, a Honeywell APEX avionics suite, and a maximum takeoff weight of 10,450 pounds.

The installation of an ATS in the Model PC–12/47E is intended to reduce pilot workload. The ATS is useable in all phases from takeoff to approach. The system includes torque and airspeed management capability along with monitors to prevent the system from exceeding critical engine or airspeed limits. Throttle movement is provided by a servo, which moves the throttle lever. The servo can be overridden by pilot movement of the throttle and disengages upon selection of the A/T disconnect switch on the throttle.

Section 23.1329, amendment 23–49, only contained requirements for automatic pilot systems that act on the airplane flight controls. Autothrust systems are automatic systems that act on the thrust controls. These systems provide enhanced automation and safety, but may also introduce pilot confusion, countering the safety benefit. 14 CFR 25.1329, amendment 25–119, addresses these concerns for transport airplanes. Therefore, these special conditions are based on § 25.1329 and provide additional requirements to standardize the pilot interface and system behavior and enhance pilot awareness of system active and armed modes.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Pilatus must show that the Model PC–12/47E airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A78EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' In addition to the original type certification basis, the FAA has determined that the Model PC–12/47E must also comply with § 23.905(d) as amended by amendment 23–59, § 23.1306 as amended by amendment 23–61, § 23.1308 as amended by amendment 23–57, and §§ 23.1309 and 23.1310 as amended by amendment 23–62.

If the Administrator finds that the applicable airworthiness regulations in part 23 do not contain adequate or appropriate safety standards for the Model PC–12/47E airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model PC–12/47E must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Novel or Unusual Design Features

The Model PC–12/47E airplane will incorporate the following novel or unusual design features:

An ATS, which provides commands to a servo attached to the throttle lever that automatically controls engine thrust. The ATS can be operated to control torque or airspeed.

Discussion

The part 23 airworthiness regulations in the type certification basis do not contain appropriate safety standards for this design feature. However, part 25 regulations contain appropriate airworthiness standards; therefore, these special conditions are derived from 14 CFR 25.1329, ''Flight guidance system,'' applicable to autothrust systems.

Applicability

These special conditions are applicable to the Model PC–12/47E airplane. Should Pilatus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on the Model PC–12/47E airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702; Pub. L. 113–53, 127 Stat. 584 (49 U.S.C. 44704) note.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Pilatus Aircraft Ltd. Model PC–12/47E airplanes.

Autothrust System

In addition to the requirements of §§ 23.143, 23.1309, and 23.1329, the following apply:

(a) Quick disengagement controls for the autothrust function must be provided for each pilot. The autothrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the thrust control levers.

(b) The effects of a failure of the system to disengage the autothrust function when manually commanded by the pilot must be assessed in accordance with the requirements of § 23.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause the autothrust system to affect a transient response that alters the airplane's flight path any greater than a minor transient, as defined in paragraph (l)(1) of these special conditions.

(d) Under normal conditions, the disengagement of any automatic control function of a flight guidance system may not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph (l)(2) of these special conditions.

(f) The function and direction of motion of each command reference control, such as heading select or vertical speed, must be plainly indicated on—or adjacent to—each

[5] As of this special condition publishing date, engine approval is in process. The final engine model number will be updated on Type Certification Data Sheet A78EU upon engine approval completion.

control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flightcrew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autothrust function, a caution must be provided to each pilot.

(k) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust may not create a potential hazard when the flightcrew applies an override force to the thrust levers.

(l) For purposes of these special conditions, a transient is a disturbance in the control or flight path of the airplane that is not consistent with response to flightcrew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flightcrew actions that are well within their capabilities. A minor transient may involve a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flightcrew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

(i) Exceptional piloting skill, alertness, or strength.

(ii) Forces applied by the pilot which are greater than those specified in § 23.143(c).

(iii) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

Issued in Kansas City, Missouri, on August 1, 2019.

Pat Mullen,

Manager, Small Airplane Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–17570 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0117; Product Identifier 2018–NM–169–AD; Amendment 39–19696; AD 2019–15–03]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all 328 Support Services GmbH Model 328–100 airplanes. This AD was prompted by a report indicating that undetected cracks may develop at the roll spoiler bearing arms. This AD requires a one-time non-destructive test (NDT) inspection for cracks in the roll spoiler bearing arms and, if necessary, corrective actions. The agency is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2019.

ADDRESSES: For service information identified in this final rule, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; email *gsc.op@328support.de;* internet *http://www.328support.de.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0117.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0117; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all 328 Support Services GmbH Model 328–100 airplanes. The NPRM published in the **Federal Register** on March 8, 2019 (84 FR 8482). The NPRM was prompted by a report indicating that undetected cracks may develop at the roll spoiler bearing arms. The NPRM proposed to require a one-time NDT inspection for cracks in the roll spoiler bearing arms and, if necessary, corrective actions.

The FAA is issuing this AD to address cracks at the roll spoiler bearing arms, which, if not detected and corrected, could lead to a roll spoiler becoming unresponsive to flight crew control inputs, possibly resulting in loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2018–0254R1, dated June 4, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all 328 Support

Services GmbH Model 328–100 airplanes. The MCAI states:

Dornier 328 Maintenance Review Board Report provides instructions for a detailed inspection for the roll spoilers, including the bearing arms, by eddy current [EC] method. It was reported that whilst performing Maintenance Planning Document Task 57–71–03–02–01, referring to Non-Destructive Test (NDT) Manual task 57–71–03–318–000–AA0, the stacking of 6 parts at the bearing arm No. 3 prevents detection of cracks with the given EC test settings. The NDT results are distorted by geometric features such as part edges and fastener installations. Furthermore, the access to certain areas is limited for the suggested NDT probe for geometrical reasons. The result of the technical investigation identified that undetected cracks may develop at the roll spoiler bearing arms, leading to a broken (disconnected) bearing arm No. 3, where the actuator is connected.

This condition, if not detected and corrected, could lead to a roll spoiler becoming unresponsive to flight crew control inputs, possibly resulting in loss of control of the aeroplane.

To address this potential unsafe condition, 328 SSG published the ASB [328 Support Services Alert Service Bulletin ASB–328–57–043, dated September 21, 2018] to provide appropriate inspection instructions.

For the reasons described above, EASA issued AD 2018–0254 to require a one-time NDT inspection of the affected parts and, depending on findings, accomplishment of applicable corrective action(s).

Since that [EASA] AD was issued, it was noted that an error had been made in the compliance times, creating an inconsistency with those in the ASB. This [EASA] AD is revised to correct those errors.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0117.

Comments

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

Requests To Correct Compliance Time

The commenters, David Davidson and David Moreno, each requested that the compliance time for accomplishing the NDT inspection specified in paragraph (h) of the proposed AD be revised to require the inspection within 2,500 flight hours (FH) after the effective date of the proposed AD instead of within 2,500 flight cycles (FC) after the effective date of the proposed AD. The commenters noted that a compliance time counted in FC conflicts with the compliance time specified in 328 Support Services Alert Service Bulletin ASB–328–57–043, dated September 21, 2018. The commenters went on to point out that using a compliance time counted in FH aligns with the regularly scheduled A5 maintenance check.

The FAA agrees with the commenters' requests to revise the specified compliance time from FC to FH. Since the agency issued the NPRM, EASA issued 2018–0254R1, dated June 4, 2019, to correct the identified error in the specified compliance time. The FAA has discussed this change with EASA and determined that using a FH compliance time will not adversely affect safety, and will allow the modification to be performed during regularly scheduled maintenance. Further, EASA and 328 Support Services GmbH provided data that confirms that the difference between FH and FC for determining compliance time is small, and the burden to the operator is minimal as a result of this change. Therefore, where figure 1 to paragraph (h) of the proposed AD used the phrase ''within 2,500 FC after the effective date of this AD,'' the FAA has revised figure 1 to paragraph (h) of this final AD to state ''within 2,500 FH after the effective date of this AD.''

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

328 Support Services has issued Alert Service Bulletin ASB–328–57–043, dated September 21, 2018. This service information describes procedures for a one-time NDT inspection for cracks in the roll spoiler bearing arms. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 27 airplanes of U.S. registry. The agency estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × $85 per hour = $680	$0	$680	$18,360

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–15–03 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–19696; Docket No. FAA–2019–0117; Product Identifier 2018–NM–169–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 airplanes, certificated in any category, all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a report indicating that undetected cracks may develop at the roll spoiler bearing arms. The FAA is issuing this AD to address cracking at the roll spoiler bearing arms, which, if not detected and corrected, could lead to a roll spoiler becoming unresponsive to flight crew control inputs, possibly resulting in loss of control of the airplane.

(f) Compliance

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

(g) Definition of Affected Parts

For the purposes of this AD, an affected part is the bearing arm of roll spoilers having part number (P/N) 001B577A1200000, 001B577A1200001, 001B577A1200002, 001B577A1200003, 001B577A1200004, or 001B577A1200005.

(h) Inspection

Within the compliance time specified in Figure 1 to paragraph (h) of this AD, as applicable, do a non-destructive test (NDT) inspection of each affected part, in accordance with the Accomplishment Instructions of 328 Support Services Alert Service Bulletin ASB–328–57–043, dated September 21, 2018. The flight cycles (FC) specified in Figure 1 to paragraph (h) of this AD are the FC accumulated on the airplane since first flight of the airplane, unless otherwise specified.

Figure 1 to paragraph (h) – *Affected Parts Inspection*

Total FC Accumulated	Compliance Time
More than 25,000 FC	Within 2,500 flight hours (FH) after the effective date of this AD
25,000 FC or less	Before exceeding 25,000 total FC, or within 2,500 FH after the effective date of this AD, whichever occurs later

(i) Corrective Action

If any crack is found during any inspection required by paragraph (h) of this AD: Before further flight, obtain corrective actions approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or 328 Support Services GmbH's EASA Design Organization Approval (DOA); and accomplish the corrective actions within the compliance time specified therein. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) No Reporting Requirement

Although 328 Support Services Alert Service Bulletin ASB–328–57–043, dated September 21, 2018, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or 328 Support Services GmbH's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0254R1, dated June 4, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0117.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228.

(m) Material Incorporated by Reference

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

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

(i) 328 Support Services Alert Service Bulletin ASB–328–57–043, dated September 21, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; email *gsc.op@328support.de;* internet *http://www.328support.de.*

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

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

Issued in Des Moines, Washington, on July 26, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–17504 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0575; Product Identifier 2019–NM–113–AD; Amendment 39–19690; AD 2019–14–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting an airworthiness directive (AD) for certain The Boeing Company Model 737–8 and 737–9 airplanes. This AD requires a maintenance records check to determine if any main slat track assembly has been removed, an inspection of the main slat track assemblies for a suspect lot number or a lot number that cannot be determined, and applicable on-condition actions. This AD was prompted by a report that certain main slat track assemblies were manufactured incorrectly and are affected by hydrogen embrittlement. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 30, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 30, 2019.

The FAA must receive comments on this AD by September 30, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0575.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0575; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3529; email: *Greg.Rutar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report from Boeing indicating that 148 main slat track assemblies from a set of lot numbers were manufactured incorrectly and are affected by hydrogen embrittlement. Main slat track assemblies that are affected by hydrogen embrittlement have reduced strength. After reviewing information within the report provided from Boeing, the FAA determined on May 22, 2019, that this condition, if not addressed, could result in failure of main slat track assemblies, which could cause the slat to depart and potentially strike the airplane, resulting in injury to airplane occupants and/or preventing continued safe flight and landing.

Other Relevant Rulemaking

The FAA issued AD 2019–11–03, Amendment 39–19649 (84 FR 26743, June 10, 2019) (''AD 2019–11–03''), for certain The Boeing Company Model 737–700C, –800, and –900ER series airplanes. The FAA issued AD 2019–11–03 to address main slat track assemblies that have reduced strength due to hydrogen embrittlement. This condition, if not addressed, could result in failure of main slat track assemblies, which could cause the slat to depart and potentially strike the airplane, resulting in injury to airplane occupants and/or preventing continued safe flight and landing.

In the preamble of the final rule issuing AD 2019–11–03, the FAA stated that the identified unsafe condition also exists on Boeing Model 737–8 and 737–9 airplanes. The FAA also stated that Boeing was developing service information that would address the unsafe condition for these airplanes and that the FAA might consider additional rulemaking once that service information was developed, approved, and available. Boeing has since developed such service information and the FAA has determined that further rulemaking is indeed necessary.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019. This service information describes procedures for a maintenance records check to determine if any main slat track assembly has been removed, an inspection of the main slat track assemblies for a suspect lot number or a lot number that cannot be determined, sending the inspection results to Boeing, and applicable on-condition actions. On-condition actions include replacing main slat track assemblies having a suspect lot number, or having a lot number that cannot be determined, with serviceable main slat track assemblies; shipping main slat track assemblies with suspect lot numbers or with lot numbers that cannot be determined to Boeing; and contacting Boeing to report if any main slat track assembly has been removed. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is issuing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires accomplishment of the actions identified in Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0575.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Similarly, Section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

The discrepant parts are ''rotable'' in that they could be removed from the 737–8 and 737–9 airplanes that are the subject of this AD, and installed on 737 Next Gen (Boeing Model 737–600/–700/–800/–900) airplanes. The current shortage of nondiscrepant parts makes this removal and reinstallation more likely to happen. Also, these parts are not serialized, and have been marked in a manner that has proven to be impermanent. Thus, if a discrepant part were to be removed from a 737–8 or 737–9 airplane and installed on a 737 Next Gen airplane before all of the discrepant parts have been identified, it could expose the entire 737 Next Gen fleet to the unsafe condition, and likely require fleetwide inspections to find the discrepant parts.

The FAA therefore considers the prompt identification and removal of these parts from 737–8 and 737–9 airplanes to be an urgent safety issue. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0575 and Product Identifier 2019–NM–113–AD at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments the agency receives, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this final rule.

Costs of Compliance

The FAA estimates that this AD affects 33 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance records check	1 work-hour × $85 per hour = $85	$0	$85	$2,805
Inspection	3 work-hours × $85 per hour = $255	0	255	8,415
Reporting	1 work-hour × $85 per hour = $85	0	85	2,805

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement and shipping	Up to 54 work-hours × $85 per hour = Up to $4,590	Up to $82,680	Up to $87,270.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all available known costs in the cost estimate.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–14–12 The Boeing Company: Amendment 39–19690; Docket No. FAA–2019–0575; Product Identifier 2019–NM–113–AD.

(a) Effective Date

This AD is effective August 30, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–8 and 737–9 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report that certain main slat track assemblies were manufactured incorrectly and are affected by hydrogen embrittlement. The FAA is issuing this AD to address main slat track assemblies that have reduced strength due to hydrogen embrittlement. This condition, if not addressed, could result in failure of main slat track assemblies, which could cause the slat to depart and potentially strike the airplane, resulting in injury to airplane occupants and/or preventing continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–27A1311, dated June 24, 2019, which is referred to in Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019, uses the phrase ''the original issue date of requirements bulletin 737–27A1311 RB,'' this AD requires using ''the effective date of this AD.''

(2) Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019, specifies to report inspection results to Boeing within a certain compliance time. For this AD, the compliance time to report inspection results is at the applicable time

specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 3 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 3 days after the effective date of this AD.

(3) Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019, specifies to ship affected parts to Boeing within a certain compliance time if, during the inspection, it has been determined that any main slat track assembly has a suspect lot number or has a lot number that cannot be determined. For this AD, the compliance time for shipping affected parts to Boeing is at the applicable time specified in paragraph (h)(3)(i) or (h)(3)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Ship the affected part to Boeing within 30 days after removing the affected part.

(ii) If the inspection was done before the effective date of this AD: Ship the affected part to Boeing within 30 days after the effective date of this AD.

(i) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3529; email: *Greg.Rutar@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737–27A1311 RB, dated June 24, 2019.

(ii) [Reserved]

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

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

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

Issued in Des Moines, Washington, on July 23, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–17508 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0186; Product Identifier 2018–NM–153–AD; Amendment 39–19694; AD 2019–15–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. This AD was prompted by a report that main landing gear (MLG) side stay actuators have been assembled using nonconforming split ball bearings. This AD requires verification of the serial numbers of the installed MLG side stay actuator assemblies, and replacement of the affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 19, 2019.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0186.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0186; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule,

the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. The NPRM published in the **Federal Register** on May 14, 2019 (84 FR 21273). The NPRM was prompted by a report that MLG side stay actuators have been assembled using nonconforming split ball bearings. The NPRM proposed to require verification of the serial numbers of the installed MLG side stay actuator assemblies, and replacement of the affected parts.

The FAA is issuing this AD to address the affected bearings, which could potentially result in asymmetric MLG gear extension or retraction, and subsequent gear collapse during landing.

In the NPRM, the FAA referred to Canadian AD CF–2018–26, dated October 5, 2018. However, since the NPRM was issued, Transport Canada Civil Aviation (TCCA), the civil aviation authority for Canada, issued Canadian AD CF–2018–26R1, dated May 22, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. The MCAI states:

> The landing gear supplier has informed Bombardier Inc. about a quality escape involving Main Landing Gear (MLG) side stay actuators that have been assembled using non-conforming split ball bearings. The affected bearings are manufactured from material that does not meet the required material properties. If not corrected, this condition can result in potentially asymmetric MLG gear extension or retraction and subsequent gear collapse during landing.
>
> The original version of this [Canadian] AD mandated . . . verification of the installed MLG side stay actuator assemblies and replacement of the affected parts.
>
> Revision 1 of this [Canadian] AD is issued to add a reference to Table 2 in the applicable Service Bulletins (SBs) that list affected serial numbers for P/N 19011–105.

The FAA has determined that the revised MCAI has no effect on airplanes on which the actions identified in the NPRM were completed. The FAA has revised paragraph (l)(1) of this AD to refer to Canadian AD CF–2018–26R1, dated May 22, 2019.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0186.

Comments

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

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA also determined that this change will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information.

- Bombardier Service Bulletin 604–32–029, Revision 02, dated May 10, 2018.
- Bombardier Service Bulletin 605–32–006, Revision 02, dated May 10, 2018.
- Bombardier Service Bulletin 650–32–002, Revision 02, dated May 10, 2018.

The service information describes procedures to verify the serial numbers of the installed MLG side stay actuator assemblies and to replace the affected parts. These documents are distinct since they apply to the airplane model in different configurations.

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

Costs of Compliance

The FAA estimates that this AD affects 384 airplanes of U.S. registry. The agency estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$32,640

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The agency has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 7 work-hours × $85 per hour = Up to $595	Up to $1,820	Up to $2,415.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the agency has included all known costs in its cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–15–01 Bombardier, Inc.: Amendment 39–19694; Docket No. FAA–2019–0186; Product Identifier 2018–NM–153–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Main landing gear.

(e) Reason

This AD was prompted by a report that main landing gear (MLG) side stay actuators have been assembled using nonconforming split ball bearings. The FAA is issuing this AD to address the affected bearings, which could potentially result in asymmetric MLG gear extension or retraction, and subsequent gear collapse during landing.

(f) Compliance

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

(g) Inspection To Verify the Serial Number

For airplane serial numbers (S/Ns) 5301 through 5665 inclusive, 5701 through 5988 inclusive, and 6050 through 6091 inclusive, equipped with any MLG side stay actuator assembly containing split ball bearing part number (P/N) 104467672: For the left and right MLG side stay actuator assemblies having P/Ns 19011–103 and 19011–105, at the applicable time specified in figure 1 to paragraphs (g) and (h) of this AD, perform an inspection to verify the serial number, in accordance with paragraphs 2.A. and 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 2 to paragraphs (g), (h), and (i) of this AD.

Figure 1 to paragraphs (g) and (h) – *Compliance times*

Total Flight Cycles	Compliance Time
As of the effective date of this AD: 3,350 total flight cycles or fewer on an MLG side stay actuator assembly	Before the MLG side stay actuator assembly reaches 3,750 total flight cycles or 48 months from the effective date of this AD, whichever occurs first.
As of the effective date of this AD: more than 3,350 total flight cycles on an MLG side stay actuator assembly	Within 400 flight cycles or 12 months from the effective date of this AD, whichever occurs first.

Figure 2 to paragraphs (g), (h), and (i) – *Service information*

Model	Airplane S/N	Service Information
CL-600-2B16 (601-3A, 601-3R, and 604 Variants) airplanes	5301 through 5665 inclusive	Bombardier Service Bulletin 604-32-029, Revision 02, dated May 10, 2018
	5701 through 5988 inclusive	Bombardier Service Bulletin 605-32-006, Revision 02, dated May 10, 2018
	6050 through 6091 inclusive	Bombardier Service Bulletin 650-32-002, Revision 02, dated May 10, 2018

(h) Replacement

If, during the inspection specified in paragraph (g) of this AD, the identified serial number of the MLG side stay actuator assembly is listed in table 1 or table 2 of paragraph 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 2 to paragraphs (g), (h), and (i) of this AD: At the applicable time specified in figure 1 to paragraphs (g) and (h) of this AD, replace the split ball bearing having P/N 104467672, in accordance with paragraph 2.C. of the Accomplishment Instructions of the applicable service information specified in figure 2 to paragraphs (g), (h), and (i) of this AD. If the identified serial number of the MLG side stay actuator assembly is not listed in table 1 or table 2 of paragraph 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 2 to paragraphs (g), (h), and (i) of this AD, no further action is required by this paragraph.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, an MLG side stay actuator assembly with a serial number listed in table 1 or table 2 of paragraph 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 2 to paragraphs (g), (h), and (i) of this AD, unless the split ball bearing having P/N 104467672 has been previously replaced as specified in paragraph (h) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information in paragraphs (j)(1) through (j)(3) of this AD.

(1) Bombardier Service Bulletin 604–32–029, Revision 01, dated February 5, 2018.

(2) Bombardier Service Bulletin 605–32–006, Revision 01, dated February 5, 2018.

(3) Bombardier Service Bulletin 650–32–002, Revision 01, dated February 5, 2018.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s. TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–26R1, dated May 22, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0186.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

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

(m) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 604–32–029, Revision 02, dated May 10, 2018.

(ii) Bombardier Service Bulletin 605–32–006, Revision 02, dated May 10, 2018.

(iii) Bombardier Service Bulletin 650–32–002, Revision 02, dated May 10, 2018.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.*

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

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

Issued in Des Moines, Washington, on July 23, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–17506 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0192; Product Identifier 2019–NM–004–AD; Amendment 39–19692; AD 2019–14–14]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This AD was prompted by a determination that a certain aircraft maintenance manual (AMM) task provided instructions for a visual inspection of composite and metallic vertical tailplane (VTP) attachment fittings, but the inspection method did not specify detection of delamination length, which could possibly extend beyond the defined allowable limits. This AD requires a review of airplane maintenance records, and, depending on the results, one-time detailed and ultrasonic inspections of the affected parts and applicable corrective actions, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0192.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0192; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The NPRM published in the **Federal Register** on April 15, 2019 (84 FR 15162). The NPRM was prompted by a determination that a certain AMM task provided instructions for a visual inspection of composite and metallic VTP attachment fittings, but the inspection method did not specify detection of delamination length, which could possibly extend beyond the defined allowable limits. The NPRM proposed to require a review of airplane maintenance records, and, depending on the results, one-time detailed and ultrasonic inspections of the affected parts and applicable corrective actions.

The FAA is issuing this AD to address VTP attachment fittings that could be delaminated beyond allowable limits, which, if not detected and corrected, could lead to failure of the VTP attachment fittings, possibly resulting in loss of control of the airplane.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0006, dated January 17, 2019 (''EASA AD 2019–0006'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A300–600 series airplanes and Model A310 series airplanes. The MCAI states:

> AMM Task 55–36–11 provides instructions for visual inspection of composite and metallic VTP attachment fittings, and contains detailed information on damage limits. As defined in this AMM task, a composite part delamination is acceptable without further repair. However, as the inspection method included in the AMM does not allow detection of delamination length, this may consequently pass over the allowable limits defined.
>
> This condition, if not detected and corrected, could lead to failure of the VTP attachment fittings, possibly resulting in loss of control of the aeroplane.
>
> Prompted by this potential unsafe condition, Airbus issued the applicable SB [service bulletin] to provide non-destructive test instructions, which allow detection of delaminated area(s) before exceeding the limits.
>
> For the reasons described above, this [EASA] AD requires a review of maintenance records and, depending on the result, a one-time detailed inspection (DET) of the affected parts, followed by an ultrasonic (US) inspection, and, depending on findings, accomplishment of applicable corrective action(s).

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0192.

Comments

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

Request To Clarify Corrective Action

FedEx requested clarification regarding the corrective action specified in paragraph (3) of EASA AD 2019–0006. FedEx noted that paragraph (3) of EASA AD 2019–0006 directs operators to contact Airbus for corrective action instructions if any discrepancies are detected during the inspections specified in EASA AD 2019–0006. FedEx recommended to revise the proposed AD to state that Airbus should only be contacted for repair instructions if damage or delamination is found outside of the allowable damage limits, as specified in structural repair manual (SRM) 55–30–00 during the inspection specified in paragraph (2) of EASA AD 2019–0006. FedEx reasoned that clarifying the corrective action could allow operators to complete the repairs themselves for damage or delamination that are within the allowable damage limits, and that Airbus would only be

contacted if the damage or delamination is outside of the allowable damage limits. FedEx contended that this distinction could potentially reduce costs for operators and limit aircraft out-of-service time.

The FAA partially agrees with request. Paragraph (h)(5) has been added to this AD, which provides clarification to paragraph (3) of EASA AD 2019–0006 by defining discrepancies as any damage or delamination found outside allowable damage limits, which are specified in the inspection tasks in the service information (including reference to SRM 55–30–00).

Conclusion

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

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0006 describes procedures for a review of airplane maintenance records, one-time detailed and ultrasonic inspections of the affected parts, and applicable corrective actions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 133 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 21 work-hours × $85 per hour = Up to $1,785	$0	Up to $1,785	Up to $237,405.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–14–14 Airbus SAS: Amendment 39–19692; FAA–2019–0192; Product Identifier 2019–NM–004–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0006, dated January 17, 2019 (''EASA AD 2019–0006'').

(1) Airbus SAS Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes, Model A300 B4–605R and B4–622R airplanes, Model A300 F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes.

(2) Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that a certain aircraft maintenance manual task provided instructions for a visual inspection of composite and metallic vertical tailplane (VTP) attachment fittings, but the inspection method did not specify detection of delamination length, which could possibly extend beyond the defined allowable limits. The FAA is issuing this AD to address this condition, which, if not detected and corrected, could lead to failure of the VTP attachment fittings, possibly resulting in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0006.

(h) Exceptions to EASA AD 2019–0006

For purposes of determining compliance with the requirements of this AD, the following exceptions to EASA AD 2019–0006 apply.

(1) Where EASA AD 2019–006 refers to its effective date, this AD requires using the effective date of this AD.

(2) Replace the language in paragraph (2) of EASA AD 2019–0006 that states ''it is determined that the maintenance records are incomplete,'' with ''maintenance records cannot be used to positively determine that the applicable maintenance actions have been accomplished.''

(3) Replace the language in paragraph (2) of EASA AD 2019–0006 that states ''concurrently,'' with ''before further flight.''

(4) The ''Remarks'' section of EASA AD 2019–0006 does not apply to this AD.

(5) Where paragraph (3) of EASA AD 2019–0006 refers to ''discrepancies'' found in the inspection, this AD defines discrepancies as any damage or delamination found outside of specified allowable damage limits.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0006 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(k) Material Incorporated by Reference

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

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

(i) European Aviation Safety Agency (EASA) AD 2019–0006, dated January 17, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0006, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0006 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0192.

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

Issued in Des Moines, Washington, on July 23, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–17507 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0249; Product Identifier 2019–NM–010–AD; Amendment 39–19693; AD 2019–14–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–25–12, which applied to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. AD 2017–25–12 required repetitive inspections for cracking of the webs of the stub beams at certain fuselage stations (STAs), and applicable on-condition actions. This AD also requires repetitive inspections to include certain other fuselage stations for cracking of the stub beams, repetitive inspections for existing repairs at certain locations, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0249.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov*by searching for and locating Docket No. FAA–2019–0249; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; fax: 562–627–5210; email: *Peter.Jarzomb@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–25–12, Amendment 39–19126 (82 FR 59967, December 18, 2017) (''AD 2017–25–12''). AD 2017–25–12 applied to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on April 22, 2019 (84 FR 16628). The NPRM was prompted by reports of cracking in the webs of the stub beams at certain fuselage STAs, and cracking of the stub beam at fuselage STA 685 at the inboard end of the upper chord and the outboard end of the lower chord. The NPRM proposed to continue to require the existing repetitive inspections at certain fuselage stations for cracking of the stub beams, and applicable on-condition actions, and to also require repetitive inspections at fuselage STA 685. The FAA is issuing this AD to address cracking of the stub beams, which, if not corrected, could result in the loss of structural integrity of the airframe during flight, collapse of the main landing gear, and failure of the pressure deck.

Comments

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

Support for the NPRM

Boeing concurred with the content of the NPRM. Nathan Levin and Christopher D. George expressed support for the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01219SE does not affect compliance with the proposed actions.

The FAA concurs with the commenter. Paragraph (c) of the proposed AD has been redesignated as paragraph (c)(1) of this AD, and paragraph (c)(2) has been added to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirement of 14 CFR 39.17.

Request To Improve the Effectiveness of Required Inspections

Christopher D. George stated that the inspections for fuselage cracking specified in the proposed AD might avert a potential inflight catastrophe, but they fall short of identifying the root issue behind potentially flawed designs and/or inadequate building materials. The commenter shared additional concerns regarding the extent and requirements of the new fuselage inspection criteria.

The FAA infers that the commenter is requesting that the inspection requirements specified in the proposed AD be revised so the inspection reports provide extensive information regarding the root cause of the unsafe condition. The FAA disagrees with the commenter's request. The change requested by the commenter to include inspections that identify the root issue behind potentially flawed designs and/or inadequate building materials is outside the scope of this AD. The purpose of this AD is to address the identified unsafe condition. The FAA has determined that the inspections required by this AD adequately address the unsafe condition: Cracking in the webs of the stub beams at certain fuselage stations, and cracking of the stub beam at fuselage STA 685 at the inboard end of the upper chord and the outboard end of the lower chord.

As a component of our safety management system, we verify that the safety systems of the design approval holder meet applicable requirements. Working with approval holders during the design development process, we strive to avoid unsafe conditions in the first place. We are continuously evaluating our certification system and procedures and improving them when problems are found. In addition, if the FAA is made aware of issues occurring on a certificated product, we conduct an investigation, evaluate the manufacturer's root-cause analysis, and make a determination whether or not an unsafe condition exists. We then take appropriate action to mitigate the unsafe condition. The AD has not been revised in regard to this issue.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously, and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA has also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

The FAA has reviewed Boeing Alert Service Bulletin 737–53A1364, Revision 1, dated October 25, 2018. The service information describes procedures for inspections at certain fuselage stations for cracking of the stub beams (which includes the web, upper chord, and lower chord), repetitive general visual inspections for any existing repair in the STA 685 and STA 706 stub beam webs, and applicable on-condition actions. The inspections for cracking include high frequency eddy current (HFEC) and detailed inspections for cracking of the fuselage stub beam below the passenger floor at STA 685, STA 695, and STA 706, and HFEC inspections for cracking in repaired areas. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 171 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 13 work-hours × $85 per hour = Up to $1,105 per inspection cycle.	$0	Up to $1,105 per inspection cycle.	Up to $188,955 per inspection cycle.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–25–12, Amendment 39–19126 (82 FR 59967, December 18, 2017), and adding the following new AD:

2019–14–15 The Boeing Company: Amendment 39–19693; Docket No. FAA–2019–0249; Product Identifier 2019–NM–010–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

This AD replaces 2017–25–12, Amendment 39–19126 (82 FR 59967, December 18, 2017) (''AD 2017–25–12'').

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracking in the webs of the stub beams at certain fuselage stations (STAs), and cracking of the stub beam at fuselage STA 685 at the inboard end of the upper chord and the outboard end of the lower chord. The FAA is issuing this AD to address such cracking, which, if not corrected, could result in the loss of structural integrity of the airframe during flight, collapse of the main landing gear, and failure of the pressure deck.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1364, Revision 1, dated October 25, 2018: Within 120 days after the effective date of this AD, inspect the stub beams and stub beam webs for any cracking or existing repairs, and do all applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Groups 2 Through 6 Airplanes

Except as specified by paragraph (i) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1364, Revision 1, dated October 25, 2018, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1364, Revision 1, dated October 25, 2018.

(i) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Service Bulletin 737–53A1364, Revision 1, dated October 25, 2018, uses the phrase ''the revision 1 issue date of this service bulletin,'' this AD requires using ''the effective date of this AD,'' except where Boeing Alert Service Bulletin 737–53A1364, Revision 1, dated October 25, 2018, uses the phrase ''the original issue date of this service bulletin'' in a note or flag note.

(2) Where Boeing Alert Service Bulletin 737–53A1364, Revision 1, dated October 25, 2018, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as specified by paragraph (i) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

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

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

(k) Related Information

For more information about this AD, contact Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; fax: 562–627–5210; email: *Peter.Jarzomb@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737–53A1364, Revision 1, dated October 25, 2018.

(ii) [Reserved]

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

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

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

Issued in Des Moines, Washington, on July 26, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–17505 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0023; Product Identifier 2018–NM–145–AD; Amendment 39–19700; AD 2019–15–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes. This AD was prompted by reports of cracks in the frames below the passenger floor. This AD requires repetitive inspections for cracking of the fuselage lower lobe frames, and applicable on-condition actions. This AD also provides an optional terminating action for certain repetitive inspections. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0023.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0023; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes. The NPRM published in the **Federal Register** on March 1, 2019 (84 FR 6984). The NPRM was prompted by reports of cracks in the frames below the passenger floor. The NPRM proposed to require repetitive inspections for cracking of the fuselage lower lobe frames, and applicable on-condition actions. The NPRM also provided an optional terminating action for certain repetitive inspections.

The FAA is issuing this AD to address cracks that could propagate until the frame severs. Continued operation of the airplane with multiple adjacent severed frames, or the combination of a severed frame adjacent to fuselage skin chem-mill cracks, could result in an uncontrolled decompression and loss of structural integrity of the airplane.

Comments

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

Support for the NPRM

Adam Furman, Eric Jacobsen, and Riya Shah stated support for the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01219SE does not affect compliance with the proposed actions.

The FAA concurs with the commenter. The agency has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD, and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirement of 14 CFR 39.17.

Request To Revise the Applicability

Boeing requested that the applicability of the proposed AD be changed from ''all The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes'' to ''The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes as identified in Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018.'' The commenter stated that this is more accurate because not all line numbers for the identified Model 737 airplanes are affected.

The FAA agrees with the commenter's request. Paragraph 1.A.1. of Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018, identifies the affected Model 737 airplanes and does not include all of the airplane line numbers. In addition, the affected parts are not rotable, so once a part is removed from an affected airplane it would not be installed on another airplane including airplanes outside the line-number range in the service bulletin. The FAA has changed **SUMMARY** and the Discussion section in **SUPPLEMENTARY INFORMATION** of this final rule to ''certain The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes.'' The FAA has also changed paragraph (c)(1) of this AD (paragraph (c) of the proposed AD) to refer to The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018.

Request To Clarify Terminology Regarding Frames

Boeing requested that the term ''frame webs'' be changed to ''frames'' where the location of the cracking was described, throughout the NPRM. The commenter stated that this is more accurate because cracks were found in the frame chords as well as the frame webs, and the reference should be to frames as a whole.

The FAA agrees with the commenter's request for the reasons provided by the commenter. The FAA has revised **SUMMARY** and the Discussion section in **SUPPLEMENTARY INFORMATION** of this final rule and paragraph (e) of this AD to refer to cracks in ''frames'' instead of ''frame webs.''

Request To Clarify Terminology Regarding Chem-Mill Cracks

Boeing requested that the term ''fuselage skin chem-milled cracks'' be changed to ''fuselage skin chem-mill cracks'' throughout the NPRM. The commenter stated that this more accurately describes the condition.

The FAA agrees with the commenter's request for the reason provided by the commenter. The agency has revised the Discussion section of this final rule and paragraph (e) of this AD to refer to ''fuselage skin chem-mill'' cracks instead of ''fuselage skin chem-milled'' cracks.

Request To Reduce the Compliance Time

Katie Draus, Shawn McPartland, and an anonymous commenter requested that the compliance time in the proposed AD be reduced. The commenters recommended that the proposed AD be put into effect immediately because of the seriousness of the unsafe condition.

The FAA acknowledges the commenters' concerns, but does not agree to reduce the compliance time of this final rule. In developing an appropriate compliance time for this action, the agency considered the urgency associated with the unsafe condition, the availability of replacement parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. The FAA has not revised this AD in regard to this issue.

Request To Revise Exceptions to Service Information Specifications

Boeing requested that paragraph (j)(1) of the proposed AD be revised so that instead of mandating the use of ''the effective date of this AD,'' it would state that the ''effective date of this AD'' can be substituted for the original issue date of Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018. Boeing stated that mandating ''the effective date of this AD'' for determining compliance might discourage operators from doing the actions in the service information prior to the effective date of the AD.

Boeing also noted that some of the work instructions in Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018, contain notes that provide relief from inspection requirements if a Boeing repair was accomplished for the crack condition after the original issue date of the service bulletin. Boeing pointed out that because these notes also contain the phrase ''the original issue date of this service bulletin,'' requiring the use of ''the effective date of this AD'' might lead operators to think that an AMOC approval would be needed for relief from inspections on repairs accomplished after the service bulletin release but prior to publication of the final rule. Boeing suggested that changing the wording would clarify that an AMOC approval is not needed.

The FAA acknowledges the commenter's concern regarding this issue. The agency disagrees that the wording would discourage operators from accomplishing the actions in Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018, prior to the effective date of this AD because paragraph (f) of this AD provides credit for the actions done before the effective date of this AD.

In response to the commenter's concern regarding the use of ''the effective date of this AD'' instead of ''the original issue date of this service bulletin'' in the notes of Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018, the FAA has revised paragraph (j)(1) of this AD to state that ''Where BASB 737–53A1362 uses the phrase 'the original issue date of this service bulletin,' this AD requires using 'the effective date of this AD,' except where BASB 737–53A1362 uses the phrase 'the original issue date of this service bulletin' in a note or flag note.''

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018. The service information describes procedures for repetitive inspections for cracking of the fuselage lower lobe frames, applicable on-condition actions, and an optional modification of the tooling holes and insulation attachment holes. On-condition actions include repetitive inspections for cracking of the lower lobe frames, repair, and repetitive post-repair inspections for cracking.

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

Costs of Compliance

The FAA estimates that this AD affects 262 airplanes of U.S. registry. The agency estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 56 work-hours × $85 per hour = $4,760 per inspection cycle.	$0	Up to $4,760 per inspection cycle	Up to $1,247,120 per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modification	1 work-hour × $85 per hour = $85 per hole	[*]	$85 per hole.

* Parts and materials (*e.g.,* rivets, bolts, collars, primer, adhesive) are supplied by the operator.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–15–07 The Boeing Company: Amendment 39–19700; Docket No. FAA–2019–0023; Product Identifier 2018–NM–145–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–100, 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018 (''BASB 737–53A1362'').

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect

the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks in the frames below the passenger floor. The FAA is issuing this AD to address cracks that could propagate until the frame severs. Continued operation of the airplane with multiple adjacent severed frames, or the combination of a severed frame adjacent to fuselage skin chem-mill cracks, could result in an uncontrolled decompression and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in BASB 737–53A1362: Within 120 days after the effective date of this AD, accomplish actions to correct the unsafe condition (*e.g.,* inspections and on-condition actions) using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(h) Required Actions for Group 2 Through 20 Airplanes

For airplanes identified as Group 2 through 20 in BASB 737–53A1362: Except as specified in paragraph (i) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of BASB 737–53A1362, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of BASB 737–53A1362.

(i) Optional Terminating Action for Certain Repetitive Inspections

For airplanes identified as Group 2 through 20 in BASB 737–53A1362, accomplishment of part 13, ''Preventive Modification of the Frame Web Tooling Hole and Insulation Attachment Hole in the Section 46 Lower Lobe Frame,'' in accordance with the Accomplishment Instructions of BASB 737–53A1362, terminates the repetitive open hole high frequency eddy current inspections required by paragraph (h) of this AD, for the modified tooling hole or insulation attachment hole location only.

(j) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where BASB 737–53A1362 uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD,'' except where BASB 737–53A1362 uses the phrase ''the original issue date of this service bulletin'' in a note or flag note.

(2) Where BASB 737–53A1362 specifies contacting Boeing for repair instructions or alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (j)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) of this AD apply.

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

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

(l) Related Information

For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737–53A1362, dated September 20, 2018.

(ii) [Reserved]

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

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

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

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

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–17501 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0465; Product Identifier 2018–NE–19–AD; Amendment 39–19707; AD 2019–16–04]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–03–04 for all Engine Alliance (EA) GP7270 and GP7277 model turbofan engines with a certain engine 1st-stage low-pressure compressor (LPC) rotor assembly, referred to after this as the ''engine fan hub assembly,'' installed. AD 2019–03–04 required a visual inspection of the engine fan hub assembly for damage, a one-time eddy current inspection (ECI) of the fan hub blade slot bottom and blade slot front edge for cracks, and removal of parts if damage or defects are found. For certain GP7270 and GP7277 model turbofan

engines, this AD continues to require a one-time ECI of the engine fan hub blade slot bottom and blade slot front edge for cracks and a visual inspection of the engine fan hub assembly for damage. For all GP7270 and GP7277 model turbofan engines, this AD also requires an independent inspection of the engine fan hub assembly prior to reassembly of the engine fan hub blade lock assembly. For certain serial-numbered GP7270 and GP7277 model turbofan engines, this AD requires replacement of the engine fan hub blade lock assembly. This AD was prompted by an uncontained failure of the engine fan hub. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 30, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 30, 2019.

The FAA must receive any comments on this AD by September 30, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com*; website: *www.enginealliianceportal.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0465.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0465; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *matthew.c.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued AD 2019–03–04, Amendment 39–19556 (84 FR 4694, February 19, 2019), (''AD 2019–03–04''), for all EA GP7270 and GP7277 model turbofan engines with a certain engine fan hub assembly installed. AD 2019–03–04 required a one-time ECI of the engine fan hub blade slot bottom and blade slot front edge for cracks, a visual inspection of the engine fan hub assembly for damage, and removal of parts if damage or defects are found that are outside serviceable limits. AD 2019–03–04 resulted from the FAA's determination that inspections need to be expanded to all EA GP7270 and GP7277 model turbofan engines with the affected engine fan hub assembly installed. The FAA issued AD 2019–03–04 to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub assembly.

Actions Since AD 2019–03–04 was Issued

Since the FAA issued AD 2019–03–04, the manufacturer determined the need to require an independent inspection of the fan hub assembly for damage prior to the reassembly of the engine fan hub blade lock assembly for all EA GP7270 and GP7277 model turbofan engines. The manufacturer also developed a new design of the engine fan hub blade lock assembly that decreases the potential for damage to the engine fan hub assembly when it is disassembled. The FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019. The ASB describes procedures for ECI and visual inspection of the GP7270 and GP7277 engine fan hub assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed EA ASB EAGP7–A72–418, Revision No. 1, dated January 11, 2019. The ASB provides guidance on replacement or modification of the engine fan hub blade lock assembly.

The FAA also reviewed the following service information:

Subtask 72–31–42–210–001–A, of Task 72–31–42–000–802–A, from the A380 Aircraft Maintenance Manual (AMM). This subtask describes an on-wing visual inspection that is to be performed after removal of the engine fan hub blade lock assembly.

Figure 405 of Task 72–00–31–420–004 of the EA GP7000 Series Engine Manual (EM). This figure and task describe a visual inspection that is to be performed after removal of the engine fan hub blade lock assembly when the engine is in the shop.

Subtask 72–00–00–210–012–A, of Task 72–00–00–210–806–A, from the A380 Aircraft Maintenance Manual (AMM). This subtask describes an on-wing visual inspection that is to be performed after reassembly of the engine fan hub blade lock assembly.

Task 72–00–31–420–004, Paragraph 1.E.(13), of the GP7000 Series EM describes a visual inspection that is to be performed after reassembly of the engine fan hub blade lock assembly when the engine is in the shop.

Table 601 in Subtask 72–00–00–210–012–A, Task 72–00–00–210–806, from the A380 AMM or Task 72–00–31–220–010 of the EA GP7000 Series EM. Table 601 and Task 72–00–31–220–010 provide guidance on acceptable damage service limits.

FAA's Determination

The FAA is issuing this AD because all the relevant information was evaluated and the FAA determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires, for certain GP7270 and GP7277 model turbofan engines, a one-time ECI of the engine fan hub blade slot bottom and blade slot front edge for cracks and a visual inspection of the engine fan hub assembly for damage. For all GP7270 and GP7277 model turbofan engines, this AD also requires an independent inspection of the engine fan hub assembly prior to the reassembly of the engine fan hub blade lock assembly. For certain serial-

numbered GP7270 and GP7277 model turbofan engines, this AD requires replacement of the engine fan hub blade lock assembly with a part eligible for installation.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0465 and product identifier 2018–NE–19–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this final rule.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects zero engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
ECI and visual inspection	14 work-hours × $85 per hour = $1,190	$0	$1,190	$0
Replace fan hub blade lock assembly	25 work-hours × $85 per hour = $2,125	28,000	30,125	0

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of engines that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace engine fan hub assembly	50 work-hours × $85 per hour = $4,250	$790,500	$794,750

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) AD 2019–03–04, Amendment 39–19556 (84 FR 4694, February 19, 2019), and adding the following new AD:

2019–16–04 Engine Alliance: Amendment 39–19707; Docket No. FAA–2019–0465; Product Identifier 2018–NE–19–AD.

(a) Effective Date

This AD is effective August 30, 2019.

(b) Affected ADs

This AD replaces AD 2019–03–04, Amendment 39–19556 (84 FR 4694, February 19, 2019).

(c) Applicability

This AD applies to all Engine Alliance (EA) GP7270 and GP7277 model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an uncontained failure of the engine fan hub. The FAA is issuing this AD to detect defects, damage, and cracks that could result in an uncontained failure of the engine fan hub assembly. The unsafe condition, if not addressed, could result in uncontained failure of the engine fan hub assembly, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For EA GP7270 and GP7277 model turbofan engines, with engine fan hub assembly part numbers (P/Ns) 5760221 or 5760321, and with serial numbered engine fan hub assemblies identified in Planning Information, Table 4, in EA Alert Service Bulletin (ASB) EAGP7–A72–389, Revision No. 4, dated June 14, 2019, within 3,000 cycles since new, or before further flight after the effective date of this AD, whichever occurs later:

(i) For engine fan hub assemblies at the low-pressure compressor (LPC) module assembly level:

(A) Perform a visual inspection of the engine fan hub assembly, in accordance with the Accomplishment Instructions, For Fan Hubs at LPC Module Assembly Level, paragraphs 1.A.(1), 1.A.(4), and 1.A.(6)(a), of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019.

(B) Perform an eddy current inspection (ECI) of the engine fan hub blade slot bottoms and front edges in accordance with the Accomplishment Instructions, For Fan Hubs at LPC Module Assembly Level, paragraphs 2.A and 2.B, of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019.

(ii) For engine fan hub assemblies at the piece part level:

(A) Perform a visual inspection of the engine fan hub assembly, in accordance with the Accomplishment Instructions, For Fan Hubs at Piece Part Level, paragraphs 1.A.(1) and 1.A.(3), of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019.

(B) Perform an ECI of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs at Piece Part Level, paragraphs 2.A and 2.B, of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019.

(iii) For engine fan hub assemblies installed in an engine (on-wing or off-wing):

(A) Perform a visual inspection of the engine fan hub assembly, in accordance with the Accomplishment Instructions, For Fan Hubs Installed in an Engine, paragraphs 1.C.(1), 1.C.(5), and 1.C.(7)(a), of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019.

(B) Perform an ECI of the engine fan hub blade slot bottoms and front edges, in accordance with the Accomplishment Instructions, For Fan Hubs Installed in an Engine, paragraphs 1.D.(1) and 1.D.(2), of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019.

(iv) If the engine fan hub assembly visual inspection reveals defects or damage to the engine fan hub assembly outside the serviceable limits specified in Table 6 in the Accomplishment Instructions of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019, before further flight, remove the engine fan hub assembly from service and replace with a part eligible for installation.

(v) If the engine fan hub assembly ECI results in a rejectable indication per the Appendix, Added Data, of EA ASB EAGP7–A72–389, Revision No. 4, dated June 14, 2019, remove the engine fan hub assembly from service and, before further flight, replace with a part that is eligible for installation.

(2) For all GP7270 and GP7277 model turbofan engines, after the effective date of this AD:

(i) At the next disassembly of the engine fan hub blade lock assembly, visually inspect the following areas for damage:

(A) The fan hub blade lock retention hooks (also known as lock ring contact area); and

(B) The fan hub rim face.

(ii) At the next reassembly of the fan hub blade lock assembly, visually inspect the following areas of the engine fan hub for damage:

(A) The fan hub scallop areas;

(B) The fan hub bore area behind the balance flange;

(C) The fan hub fan blade lock retention hooks;

(D) The fan hub rim face; and

(E) The clinch nut holes.

(iii) After any reassembly per paragraph (g)(2)(ii), before further flight, perform an independent inspection of all areas of the engine fan hub referenced in paragraph (g)(2)(ii) of this AD for damage.

(iv) Thereafter, repeat inspections as required by paragraph (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD at each disassembly and reassembly of the engine fan hub blade lock assembly.

(v) As an optional terminating action to the inspection requirements and independent inspection requirements of paragraph (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD, insert the requirements for the visual inspections and independent inspections required by these paragraphs as Required Inspection Items in the approved continuous airworthiness maintenance program for the airplane.

(vi) If damage is found outside serviceable limits as the result of the inspections required by (g)(2)(i), (g)(2)(ii), or (g)(2)(iii) of this AD, before further flight, remove the engine fan hub assembly from service and replace with a part eligible for installation.

(3) For GP7270 and GP7277 model turbofan engines with engine serial numbers P550101 through P550706, remove the engine fan hub blade lock assembly, P/N 5700451, by September 1, 2020, and replace with a part eligible for installation. Refer to EA ASB EAGP7–A72–418, Revision No. 1, dated January 11, 2019, for guidance on replacement of the engine fan hub blade lock assembly.

(h) Credit for Previous Actions

You may take credit for the inspection required by paragraph (g)(1) of this AD if you performed the inspection before the effective date of this AD using EA ASB EAGP7–A72–389, Revision No. 3, dated October 18, 2018, or an earlier version.

(i) Definitions

(1) For the purpose of this AD, a part eligible for installation for replacement of the engine fan hub blade lock assembly is:

(i) A part that is not P/N 5700451, or

(ii) An engine fan hub blade lock assembly that has been modified in accordance with EA ASB EAGP7–A72–418, Revision No. 1, dated January 11, 2019 or EA ASB EAGP7–A72–418, Revision No. 0, dated December 7, 2018.

(2) For the purpose of this AD, an independent inspection is a second inspection performed by an individual qualified to perform inspections who was not involved in the original inspection of the engine fan hub assembly following disassembly and reassembly of the engine fan hub blade lock assembly.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 2018–11–16 (83 FR 27891, June 15, 2018) and AD 2019–03–04 (84 FR 4694, February 19, 2019) are

approved as AMOCs for the corresponding provisions of this AD.

(k) Related Information

For more information about this AD, contact Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *matthew.c.smith@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Engine Alliance (EA) Alert Service Bulletin EAGP7–A72–389, Revision No. 4, dated June 14, 2019.

(ii) [Reserved]

(3) For EA service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com*; website: *www.enginealliance portal.com.*

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

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

Issued in Burlington, Massachusetts, on August 9, 2019.

Karen M. Grant,

Acting Manager, Engine & Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–17417 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0274; Product Identifier 2019–NE–07–AD; Amendment 39–19704; AD 2019–16–01]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all International Aero Engines AG (IAE) V2525–D5 and V2528–D5 model turbofan engines. This AD was prompted by reports of cracked turbine exhaust cases (TECs). This AD requires initial and repetitive inspections of the affected TEC and, depending on the results of the inspections, its replacement with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2019.

ADDRESSES: For service information identified in this final rule, contact International Aero Engines AG, 400 Main Street, East Hartford, CT, 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0274.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0274; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Martin Adler, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7157; fax: 781–238–7199; email: *Martin.Adler@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all IAE V2525–D5 and V2528–D5 model turbofan engines. The NPRM published in the **Federal Register** on May 20, 2019 (84 FR 22740). The NPRM was prompted by reports of cracked TECs. The NPRM proposed to require initial and repetitive inspections of the affected TEC and, depending on the results of the inspections, its replacement with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

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

Request To Revise Compliance Time

IAE requested that the FAA revise the compliance time in paragraph (g)(1) of this AD from 4,000 to 2,000 flight cycles after the effective date of this AD. Considering that this AD will be effective in 2019, IAE indicated that this change would better align the AD compliance time with IAE's drawdown plan and the assumptions used in its safety analysis.

The FAA disagrees. The FAA finds that the proposed compliance time of 4,000 flight cycles after the effective date of this AD still meets the safety objectives of this rule. Additionally, reducing the compliance time from that proposed in the NPRM would likely require that the FAA re-notice this AD, thereby further delaying its implementation. The FAA did not change this AD.

Support for the AD

The Air Line Pilots Association International supported the NPRM as written. The Boeing Company indicated it had no comment on the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed.

Related Service Information Under 1 CFR Part 51

The FAA reviewed IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0694, Revision No. 2, dated July 2, 2018. The NMSB describes procedures for detecting any cracks that develop along the rear mount stiffener rail on the TEC. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 173 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect turbine exhaust case	3 work-hours × $85 per hour = $255	$0	$255	$44,115

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace turbine exhaust case	2 work-hours × $85 per hour = $170	$725,000	$725,170

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–16–01 International Aero Engines AG: Amendment 39–19704; Docket No. FAA–2019–0274; Product Identifier 2019–NE–07–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all International Aero Engines AG (IAE) V2525–D5 and V2528–D5 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine section.

(e) Unsafe Condition

This AD was prompted by reports of a cracked turbine exhaust case (TEC). The FAA is issuing this AD to prevent failure of the TEC. The unsafe condition, if not addressed, could result in engine separation and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) At the next engine shop visit, but not later than 4,000 flight cycles (FCs) after the effective date of this AD, perform an eddy current inspection (ECI) and high sensitivity fluorescent penetrant inspection (FPI) of the TEC front and rear mount stiffener rails for cracking indications as follows:

(i) Perform an ECI using the Accomplishment Instructions, Part I—For Engines Installed on Aircraft, paragraphs 2 through 19 inclusive, or Part II—For Engines Not Installed on Aircraft, paragraphs 2 through 18 inclusive, of IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0694, Revision No. 2, dated July 2, 2018 (''IAE NMSB V2500–ENG–72–0694'').

(ii) If a rejectable indication was found during the ECI, perform a local high sensitivity FPI to confirm a crack.

(iii) If a rejectable indication was found during the ECI, but no crack(s) were confirmed using the local high sensitivity FPI, then clean, blend and repeat the ECI in the local area of the part. Use the Accomplishment Instructions, Part I—For Engines Installed on Aircraft, paragraph 20.A.(3), or Part II—For Engines Not Installed on Aircraft, paragraph 19.A.(3), of IAE NMSB V2500–ENG–72–0694 to perform the cleaning and blending. Use the Accomplishment Instructions, Part I—For Engines Installed on Aircraft, paragraphs 2 through 19 inclusive, or Part II—For Engines Not Installed on Aircraft, paragraphs 2 through 18 inclusive, of IAE NMSB V2500–ENG–72–0694 to perform the repeat ECI.

(iv) If a rejectable indication was again found during the repeat ECI, then repeat the local high sensitivity FPI inspection in the local area of the part. If the local high sensitivity FPI does not confirm a crack, follow the instructions in the Accomplishment Instructions, Part I—For Engines Installed on Aircraft, paragraph 20.A.(5)(a), or Part II—For Engines Not Installed on Aircraft, paragraph 19.A.(5)(a), of IAE NMSB V2500–ENG–72–0694.

(2) If no cracks were found, within 2,000 FCs since the last inspection, and thereafter, repeat the inspections of paragraphs (g)(1)(i) through (iv) of this AD.

(3) If a crack was confirmed during the FPI and visual inspection required by paragraphs (g)(1)(ii) or (iv), before further flight, remove the part from service and replace with a part eligible for installation.

(h) Credit for Previous Actions

You may take credit for the inspections required by paragraph (g)(1) of this AD if you performed these inspections before the effective date of this AD, using IAE NMSB V2500–ENG–72–0694, Revision No. 1, dated February 7, 2018; or IAE NMSB V2500–ENG–72–0694, Original Issue, dated January 5, 2018.

(i) No Reporting Requirement

No reporting requirement contained within the NMSB referenced in paragraph (g) of this AD is required by this AD.

(j) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(k) Special Flight Permit

A special flight permit is not permitted if the crack indication extends past the mount stiffener rail or if there is evidence of an FPI indication on the outer diameter of the case.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

For more information about this AD, contact Martin Adler, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7157; fax: 781–238–7199; email: *Martin.Adler@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) International Aero Engines Non-Modification Service Bulletin V2500–ENG–72–0694, Revision No. 2, dated July 2, 2018.

(ii) [Reserved]

(3) For International Aero Engines service information identified in this AD, contact International Aero Engines AG, 400 Main Street, East Hartford, CT, 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *http://fleetcare.pw.utc.com.*

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

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

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

Robert J. Ganley,

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

[FR Doc. 2019–17403 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0319; Product Identifier 2019–NM–005–AD; Amendment 39–19701; AD 2019–15–08]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2002–07–05, which applied to all Airbus Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R series airplanes, and Model A300 F4–605R airplanes. AD 2002–07–05 required repetitive inspections for cracking of certain fittings, corrective action if necessary, and, for certain airplanes, a modification. This AD requires repetitive inspections for cracking of certain fittings, corrective actions if necessary, and, for certain airplanes, a modification; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a determination that, for certain airplanes, the existing inspection compliance times were not sufficient to address the unsafe condition and needed to be reduced. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0319.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0319; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2002–07–05, Amendment 39–12699 (67 FR 16983, April 9, 2002; corrected April 23, 2002 (67 FR 19810)) (''AD 2002–07–05''). AD 2002–07–05 applied to all Airbus Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R series airplanes, and Model A300 F4–605R airplanes. The NPRM published in the **Federal Register** on May 9, 2019 (84 FR 20300). The NPRM was prompted by reports of cracked frame (FR) 40 aft fittings at stringer 33 on the left and right sides of the fuselage, and a determination that the existing inspection compliance times were not sufficient to address the unsafe condition and needed to be reduced. The NPRM proposed to require repetitive inspections for cracking of certain fittings, corrective actions if necessary, and, for certain airplanes, a modification. The FAA is issuing this AD to address propagation of cracks on the FR40 aft fittings due to local stress concentrations at the upper flange runout of FR40, which could result in reduced structural integrity of the airplane.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0011R1, dated February 22, 2019 (''EASA AD 2019–0011R1'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A300 series airplanes; Model A300 B4–600 series airplanes; Model A300 B4–600R series airplanes; and Model A300 C4–605R Variant F airplanes; and certain Model A300 F4–605R airplanes. The MCAI states:

> After embodiment of Airbus SB [service bulletin] A300–53–0161, cracks were reported on three aeroplanes. Investigations highlighted that these cracks were caused by a local stress concentration at FR40 upper flange run-out, where the profile of the FR40 changes at the centre wing box connection.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> Subsequently to this finding, Airbus established a High Frequency Eddy Current (HFEC) inspection program for A300 aeroplanes implemented in service through Airbus SB A300–53–0296. In the same time, Airbus launched mod. 10430 in production line associated to SB A300–53–6048 for the retrofit campaign for A300–600. The same HFEC inspection program was defined for A300–600 aeroplanes and included in SB A300–53–6048 instructions.
>
> [Direction Generale de l'Aviation Civile] DGAC France AD F–1998–481–270 [which corresponds to FAA AD 2002–07–05] was published to mandate the embodiment of these two SBs.
>
> DGAC France AD F–2000–038–032 was also published later to mandate Airbus SB A300–53–9017 applicable to A300–600ST aeroplanes.
>
> Since DGAC France AD F–1998–481–270 and F–2000–038–032 were issued, material data used in the frame of fatigue and damage tolerance analysis has been changed. It was determined that the existing threshold and interval values must be reduced for A300–600 and A300–600ST fleet. Consequently, Airbus revised SB A300–53–6048 to Revision 05 and SB A300–53–9017 to Revision 02 to take into account the new thresholds and intervals.
>
> For the reasons described above, this [EASA] AD retains the requirement of DGAC France AD F–1998–481–270R2 and F–2000–038–032R1, which are superseded, and introduces new thresholds and intervals for A300–600 and A300–600ST aeroplanes.
>
> This [EASA] AD is revised to correct a typo in the Applicability, introduces Tables 1a and 1b, replacing original Table 1, to clarify inspection compliance times, and removes Note 1. This revised [EASA] AD also grants credit for actions accomplished using previous revisions of the applicable SB.

The MCAI added Model A300 C4–605R Variant F airplanes to its applicability because those airplanes are affected by the identified unsafe condition. Therefore, this AD also added Model A300 C4–605R Variant F airplanes to the applicability. Those airplanes were not on the U.S. type certificate data sheet at the time AD 2002–07–05 was issued. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0319.

Comments

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

Conclusion

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

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

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0011R1 describes procedures for modifying the profile of the FR40 aft fittings for certain airplanes, repetitive HFEC inspections for cracking of certain fittings, corrective actions for any cracking found, and reporting inspections findings.

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

Costs of Compliance

The FAA estimates that this AD affects 66 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS*

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2002–07–05	Up to 102 work-hours × $85 per hour = $8,670.	$874	Up to $9,544	Up to $629,904.

ESTIMATED COSTS FOR REQUIRED ACTIONS*—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New actions	Up to 37 work-hours × $85 per hour = $3,145.	2,550	Up to $5,695	Up to $375,870.

*Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $5,610, or $85 per product.

The FAA has received no definitive data that would enable us to provide cost estimates for the on-condition action specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–07–05, Amendment 39–12699 (67 FR 16983, April 9, 2002; corrected April 23, 2002 (67 FR 19810)), and adding the following new AD:

2019–15–08 Airbus SAS: Amendment 39–19701; Docket No. FAA–2019–0319; Product Identifier 2019–NM–005–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

This AD replaces 2002–07–05, Amendment 39–12699 (67 FR 16983, April 9, 2002; corrected April 23, 2002 (67 FR 19810)) (''AD 2002–07–05'').

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0011R1, dated February 22, 2019 (''EASA AD 2019–0011R1'').

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 C4–605R Variant F airplanes.

(5) Model A300 F4–605R airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracked frame (FR) 40 aft fittings at stringer 33 on the left and right sides of the fuselage, and a determination that the existing inspection compliance times were not sufficient to address the unsafe condition and needed to be reduced. We are issuing this AD to address propagation of cracks on the FR40 aft fittings due to local stress concentrations at the upper flange runout of FR40, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and

compliance times specified in, and in accordance with, EASA AD 2019–0011R1.

(h) Exceptions to EASA AD 2019–0011R1

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0011R1 refers to its effective date, or February 6, 2019 (the effective date of EASA AD 2019–0011, dated January 23, 2019), this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0011R1 does not apply to this AD.

(3) Paragraphs (7) and (8) of EASA AD 2018–0011R1 specify to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (h)(3)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2002–07–05 are approved as AMOCs for the corresponding provisions of EASA AD 2019–0011R1 that are required by paragraph (g) of this AD.

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0011R1 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(4) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0011R1, dated February 22, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0011R1, contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

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

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–17503 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0207; Product Identifier 2019–NE–02–AD; Amendment 39–19703; AD 2019–15–10]

RIN 2120–AA64

Airworthiness Directives; Safran Aerosystems Life Jackets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Safran Aerosystems (formerly Zodiac Aerospace Services) life jackets. This AD was prompted by reports of defective welding on certain life jackets around the inflation system. This AD requires removal and replacement of the affected life jackets. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 19, 2019.

ADDRESSES: For service information identified in this final rule, contact Zodiac Aerospace Services, 61 Rue Pierre Curie, CS20001, 78370 Plaisir Cedex, France; phone: + 33 1 61 34 23 23; fax: + 33 1 61 34 21 13; email: *Technical.Retrofit@zodiacaerospace.com;* internet: *http://tpi.services.zodiacaerospace.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0207.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–

0207; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Erin King, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone 781–238–7655; fax: 781–238–7199; email: *erin.king@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Safran Aerosystems life jackets. The NPRM published in the **Federal Register** on April 15, 2019 (84 FR 15160). The NPRM was prompted by reports of defective welding on certain life jackets around the inflation system. The NPRM proposed to require removal and replacement of the affected life jackets. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2019–0010, dated January 23, 2019 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Defective welding around the inflation system has been reportedly found on certain life jackets on the production line. Subsequent investigation results identified a batch of life jackets which might be affected by this manufacturing defect.
>
> This condition, if not corrected, could lead to inability of the life jacket to perform its intended function, possible resulting in injury to the user of that life jacket.
>
> To address this potential unsafe condition, Safran Aerosystems issued the SB, providing the list of affected parts, and the repair SB, providing instructions to repair affected parts. For the reason described above, this [EASA] AD requires replacement of affected life jackets, and allows their (re)installation on an aircraft only after having being repaired.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0207.

Comments

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

Request To Update Service Information

Alaska Airlines, Inc. (ASA) and Empire Airlines requested that the FAA update all references to Zodiac Aerospace Services Service Bulletin (SB) 25–65–33, Revision 01, dated January 8, 2019, and Zodiac Aerospace Services SB 25–65–34, Original Issue, dated January 8, 2019, to Revision 02 and Revision 01, respectively. ASA indicated that updated service information was published during the NPRM commenting period, and updating this information would avoid the need for operators to submit alternative methods of compliance requests.

The FAA agrees to incorporate the latest service information in this AD.

Request for Previous Credit

ASA requested the final rule include a ''Credit for Previous Actions'' paragraph allowing credit for performing the inspection using Zodiac Aerospace Services SB 25–65–33, Revision 01, dated January 8, 2019, or performing the modification using Zodiac Aerospace Services SB 25–65–34, Original Issue, dated January 8, 2019.

The FAA partially agrees. As noted in the previous response, the FAA agrees with incorporating the latest service information in the applicability section and the definition section of this AD. The FAA notes the applicability of this AD and the definition of a part eligible of installation has not changed as the information in Table 1 of Revision 02 and Revision 01 of Zodiac Aerospace Services SB 25–65–33 is identical. Therefore, the FAA is not referencing Revision 01 of Zodiac Aerospace Services SB 25–65–33 in this AD and previous credit is not required.

The FAA has also revised the Installation Prohibition section of this AD to allow the use of either Zodiac Aerospace Services SB 25–65–34, Revision 01, dated March 15, 2019, or Original Issue, dated January 8, 2019, to perform the repair and marking. The FAA, therefore, does not require a previous credit section in this AD.

Request To Clarify the Eligible for Installation Definition

ASA requested that the FAA clarify the definition of a life jacket eligible for installation. ASA proposed defining a life jacket eligible for installation as one that is ''not applicable'' to Zodiac Aerospace Services SB 25–65–33, Revision 02, dated March 15, 2019, or one that is repaired in accordance with Zodiac Aerospace Services SB 25–65–34, Revision 01, dated March 15, 2019.

The FAA agrees. The FAA clarifies the definition of a life jacket eligible for installation in this AD.

Support for the NPRM

Several individual commenters expressed support for the NPRM. One commenter supported the NPRM but noted that cost should be a secondary consideration in determining whether to issue an AD on a potentially life-saving component. Another commenter supported the NPRM but added that all Safran Aerosystems life jackets should be removed from airplanes for safety precautions and passengers on the airplanes should be informed of the issue and know that it is being addressed.

The FAA partially agrees. The FAA agrees with the importance of this AD action because life jackets are potentially life-saving devices and must be in working condition. The FAA also notes that it considers cost when developing rules, but its primary consideration is safety.

The FAA disagrees with expanding the applicability of this AD to all Safran Aerosystems life jackets because the information relied upon by the FAA indicates an unsafe condition exists only with respect to those life jackets identified in the Applicability section of this AD. Passengers who wish to find information on safety issues related to specific model aircraft, engines, propellers, or associated appliances may view airworthiness directives at *www.regulations.gov.* The FAA did not change this AD.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Zodiac Aerospace Services SB 25–65–33, Revision 02, dated March 15, 2019, and Zodiac Aerospace Services SB 25–65–34, Revision 01, dated March 15, 2019. Zodiac Aerospace Services SB 25–65–33 identifies the affected life jackets by part number and serial number. Zodiac Aerospace Services SB 25–65–34 describes procedures for repairing and marking the affected life jackets. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects an unknown number of life jackets installed on, but not limited to, ATR–GIE Avions de Transport Regional ATR 42 and ATR 72, Airbus A318/A319/A320/A321, Airbus A330, Airbus A340, Airbus A350, and Airbus A380 airplanes of U.S. registry. Operators have the option to replace or repair the affected life jackets. The FAA has no way of determining the number of life jackets that might be replaced or repaired.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Inspect life jacket	0.1 work-hours × $85 per hour = $8.50	$0	$8.50
Replace life jacket	0.5 work-hours × $85 per hour = $42.50	96	138.50
Repair life jacket	0.5 work-hours × $85 per hour = $42.50	0	42.50

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–15–10 Safran Aerosystems (formerly Zodiac Aerospace Services): Amendment 39–19703; Docket No. FAA–2019–0207; Product Identifier 2019–NE–02–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Safran Aerosystems life jackets with part number (P/N) 210225–2, P/N 216200–0, or P/N 216203–0, and with a serial number listed in Table 1 of Zodiac Aerospace Services Service Bulletin (SB) 25–65–33, Revision 02, dated March 15, 2019, that are not marked with ''Mod.per SB 25–65–34'' in the identification area.

(2) These appliances are installed on, but not limited to, ATR–GIE Avions de Transport Regional ATR 42 and ATR 72, Airbus A318/A319/A320/A321, Airbus A330, Airbus A340, Airbus A350, and Airbus A380 airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 2561, Life Jacket.

(e) Unsafe Condition

This AD was prompted by reports of defective welding on certain life jackets around the inflation system. The FAA is issuing this AD to prevent failure of the life jacket. The unsafe condition, if not addressed, could result in injury to the wearer of the life jacket.

(f) Compliance

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

(g) Required Actions

Within six months after the effective date of this AD, remove each affected life jacket from the airplane and, before further flight, replace the life jacket with a life jacket eligible for installation.

(h) Installation Prohibition

After the effective date of this AD, do not install on any airplane an affected life jacket unless it has been repaired and marked to indicate compliance with such repair in accordance with Zodiac Aerospace Services SB 25–65–34, Revision 01, dated March 15, 2019, or Original Issue, dated January 8, 2019; or a method approved by the FAA.

(i) Definition

A life jacket eligible for installation is a new life jacket not listed in Table 1 of Zodiac Aerospace Services SB 25–65–33, Revision 02, dated March 15, 2019, or a life jacket repaired in accordance with Zodiac Aerospace Services SB 25–65–34, Revision 01, dated March 15, 2019, or Original Issue, dated January 8, 2019; or by a method approved by the FAA.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD.

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

(k) Related Information

(1) For more information about this AD, contact Erin King, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone 781–238–7655; fax: 781–238–7199; email: *erin.king@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2019–0010, dated January 23, 2019, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0207.

(l) Material Incorporated by Reference

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

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

(i) Zodiac Aerospace Services Service Bulletin (SB) 25–65–33, Revision 02, dated March 15, 2019.

(ii) Zodiac Aerospace Services SB 25–65–34, Revision 01, dated March 15, 2019.

(3) For Safran Aerosystems service information identified in this AD, contact Zodiac Aerospace Services, 61 Rue Pierre Curie, CS20001, 78370 Plaisir Cedex, France; phone: + 33 1 61 34 23 23; fax: + 33 1 61 34 21 13; email: *Technical.Retrofit@zodiacaerospace.com*; internet: *http://tpi.services.zodiacaerospace.com.*

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

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

Issued in Burlington, Massachusetts, on August 2, 2019.

Karen M. Grant,

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

[FR Doc. 2019–17402 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0120; Product Identifier 2018–NM–167–AD; Amendment 39–19702; AD 2019–15–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–400 series airplanes. This AD was prompted by a report of a cracked outboard spoiler actuator mounting bracket. This AD requires repetitive inspections of the outboard spoiler actuator mounting brackets, replacement of any cracked bracket, and eventual replacement of all brackets with a re-designed part that would terminate the repetitive inspections. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 19, 2019.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0120.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0120; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: 516–287–7329; fax: 516–794–5531; email: *Aziz.Ahmed@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on March 21, 2019 (84 FR 10449). The NPRM was prompted by a report of a cracked outboard spoiler actuator mounting bracket. The NPRM proposed to require repetitive inspections of the outboard spoiler actuator mounting brackets, replacement of any cracked bracket, and eventual replacement of all brackets with a re-designed part that would terminate the repetitive inspections.

The FAA is issuing this AD to address cracking of the outboard spoiler actuator mounting brackets, which could cause inoperability or jam of a single spoiler panel and possible jam of the aileron circuit. This condition, if not corrected, could adversely affect the continued safe operation and landing of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority

for Canada, has issued Canadian AD CF–2018–21R1, effective November 1, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–400 series airplanes. The MCAI states:

During a scheduled aileron inspection, a crack was found in the right-hand outboard spoiler bracket of an in-service aircraft. An investigation concluded that the crack was caused by low load, high cycle fatigue. A cracked bracket could cause inoperability or jam of a single spoiler panel and possible jam of the aileron circuit. This condition, if not corrected, could adversely affect the continued safe operation and landing of the aeroplane.

The original version of this [Canadian] AD required initial and repetitive inspections of the outboard spoiler brackets, and required replacement of any brackets found cracked. It also required replacement of the brackets with a new design, which terminates the inspection requirement.

Revision 1 of this [Canadian] AD is issued to correct an error in the date of Service Bulletin (SB) 84–27–72 Revision A. This [Canadian] AD also clarifies the part numbers of the outboard spoiler actuator brackets and their assemblies.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0120.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA) agrees with the intent of the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 84–27–72, Revision A, dated November 9, 2017. This service information describes procedures for repetitively inspecting the left and right outboard spoiler actuator mounting brackets for cracks, replacing cracked brackets, eventually replacing all brackets with re-designed parts, and related investigative and corrective actions.

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

Costs of Compliance

The FAA estimates that this AD affects 53 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
20 work-hours × $85 per hour = $1,700	$4,142	$5,842	$309,626

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–15–09 Bombardier, Inc.: Amendment 39–19702; Docket No. FAA–2019–0120; Product Identifier 2018–NM–167–AD.

(a) Effective Date

This AD is effective September 19, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers (S/Ns) 4001 through 4547 inclusive, having outboard spoiler actuator mounting brackets with part numbers (P/Ns) 85714052–101 or 85714052–102.

(d) Subject

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

(e) Reason

This AD was prompted by a report of a cracked outboard spoiler actuator mounting bracket. The FAA is issuing this AD to address cracking of the outboard spoiler actuator mounting brackets, which could cause inoperability or jam of a single spoiler panel and possible jam of the aileron circuit. This condition, if not corrected, could adversely affect the continued safe operation and landing of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do a general visual inspection for cracks in the left and right outboard spoiler actuator mounting brackets having P/N 85714052–101 or 85714052–102 (belonging to assemblies having P/N 85714018–001 or P/N 85714018–002, respectively), in accordance with Section 3.B, Part A, of the Accomplishment Instructions of Bombardier Service Bulletin 84–27–72, Revision A, dated November 9, 2017. Repeat the inspection thereafter at intervals not to exceed 8,000 flight hours.

(1) For airplanes having less than 12,000 total flight hours as of the effective date of this AD: Prior to the accumulation of 18,000 total flight hours.

(2) For airplanes having 12,000 total flight hours or more as of the effective date of this AD: Within 6,000 flight hours after the effective date of this AD.

(h) Part Replacement

(1) If, during any inspection required by paragraph (g) of this AD, either the left or right outboard spoiler actuator mounting bracket is found cracked: Before further flight, replace both the left and right brackets with new bracket assemblies having P/N 85714018–003 or P/N 85714018–004, including doing all applicable related investigative actions and corrective actions, in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 84–27–72, Revision A, dated November 9, 2017; except, where the service information specifies contacting Bombardier for corrective action, this AD requires accomplishing the action using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(2) If, during any inspection required by paragraph (g) of this AD, no cracking is found on the left and right outboard spoiler actuator mounting brackets, and the left and right outboard spoiler actuator mounting brackets have not already been replaced per the requirements of paragraph (h)(1) of this AD: Replace both the left and right brackets with new bracket assemblies having P/N 85714018–003 or P/N 85714018–004, including doing all applicable related investigative actions and corrective actions, at the applicable time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD, in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 84–27–72, Revision A, dated November 9, 2017; except, where the service information specifies contacting Bombardier for corrective action, this AD requires accomplishing the action using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature. Related investigative and corrective actions must be done before further flight.

(i) For airplanes that have accumulated less than 34,000 total flight hours as of the effective date of this AD: Replace the outboard spoiler actuator mounting brackets prior to the airplane accumulating 40,000 total flight hours.

(ii) For airplanes that have accumulated 34,000 total flight hours or more as of the effective date of this AD: Replace the outboard spoiler actuator mounting brackets within 6,000 flight hours after the effective date of this AD.

(i) Terminating Action for Repetitive Inspections

Replacement of an outboard spoiler actuator mounting bracket, in accordance with the requirements of paragraph (h) of this AD, is terminating action for the repetitive inspections required by paragraph (g) of this AD for the replaced bracket.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–27–72, dated January 19, 2017.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–21R1, effective November 1, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0120.

(2) For more information about this AD, contact Aziz Ahmed, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: 516–287–7329; fax: 516–794–5531; email: *Aziz.Ahmed@faa.gov.*

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

(m) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 84–27–72, Revision A, dated November 9, 2017.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* internet *http://www.bombardier.com.*

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

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

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

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–17502 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0459; Product Identifier 2018–NE–36–AD; Amendment 39–19699; AD 2019–15–06]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–22–07 for all Engine Alliance (EA) GP7270, GP7272, and GP7277 model turbofan engines. AD 2018–22–07 required inspection of the stage 6 seal ring for correct installation and inspection of the high-pressure compressor (HPC) stages 2–5 spool for cracks and, depending on the results of the inspections, replacement of the HPC stages 2–5 spool with a part eligible for installation. This AD requires the same inspections but reduces the inspection interval and adds a repetitive inspection and a mandatory terminating action. This AD was prompted by a shop finding of axial cracks in the interstage 5–6 seal teeth of the HPC stages 2–5 spool spacer arm due to an incorrectly installed stage 6 seal ring. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 30, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 30, 2019.

The FAA must receive any comments on this AD by September 30, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, m–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT, 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.enginealliianceportal.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0459.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0459; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *Matthew.C.Smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued AD 2018–22–07, Amendment 39–19480 (83 FR 66609, December 27, 2018), (''AD 2018–22–07'') for all EA GP7270, GP7272, and GP7277 model turbofan engines. AD 2018–22–07 required inspection of the stage 6 seal ring for correct installation and inspection of the HPC stages 2–5 spool for cracks and, depending on the results of the inspections, replacement of the HPC stages 2–5 spool with a part eligible for installation. AD 2018–22–07 resulted from a shop finding of axial cracks in the HPC interstage 5–6 seal teeth of the HPC stages 2–5 spool spacer arm due to an incorrectly installed stage 6 seal ring. The FAA issued AD 2018–22–07 to prevent failure of the HPC interstage 5–6 seal teeth and uncontained release of the HPC stages 2–5 spool.

Actions Since AD 2018–22–07 Was Issued

Since the FAA issued AD 2018–22–07, EA identified additional cracks as a result of inspections required by AD 2018–22–07. After further analysis, EA identified a subpopulation of parts that had the HPC rotor assembly disassembled and reassembled, which require additional inspections. EA subsequently completed a new safety risk assessment and, based on the findings, decided to retain the previous inspections but also add repetitive inspections and an additional in-shop inspection as a terminating action. The in-shop inspections are a terminating action for the engines with HPC stages 2–5 spools identified in paragraph (g)(2) of this AD. The FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EA Alert Service Bulletin (ASB) EAGP7–A72–395, Revision No. 3, dated June 3, 2019; EA Service Bulletin (SB) EAGP7–72–413, dated February 4, 2019; and EA SB EAGP7–72–398, dated February 4, 2019. EA ASB EAGP7–A72–395 describes procedures for performing a borescope inspection (BSI) of the HPC stages 2–5 spool for cracks, visual inspection of the stage 6 seal ring for correct installation, visual inspection of the HPC interstage 5–6 seal teeth for damage, and removal and replacement of parts if damage is found outside serviceable limits. EA SB EAGP7–72–413 describes procedures for performing a repetitive BSI of the aft and forward HPC interstage 5–6 seal teeth for cracks or missing coating. EA SB EAGP7–72–398 describes procedures for performing an ECI and dimensional inspection of the HPC stages 2–5 spool interstage 5–6 seal teeth for cracks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is issuing this AD because it evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires an initial inspection of the HPC stage 6 seal ring for correct installation and inspection of the HPC stages 2–5 spool for cracks or missing coating. This AD also requires repetitive on-wing inspections for a sub-population of HPT stages 2–5 spools. This AD requires removal and replacement of the HPC stages 2–5 spool if, as the result of any inspection required by this AD, the stage 6 seal ring is found installed incorrectly or the HPC

interstage 5–6 seal teeth are found cracked or are missing coating. As terminating action to the repetitive on-wing inspections, this AD requires additional in-shop inspections and replacement of the HPC stages 2–5 spool based on the results of those inspections.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0459 and product identifier 2018–NE–36–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this final rule.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects zero engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Initial BSI	4 work-hours × $85 per hour = $340	$0	$340	$0
Repetitive BSI	3 work-hours × $85 per hour = $255	0	255	0
In-shop terminating action	6 work-hours × $85 per hour = $510	0	510	0

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of HPC stages 2–5 spool	8 work-hours × $85 per hour = $680	$346,540	$347,220

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2018–22–07, Amendment 39–19480 (83 FR 66609, December 27, 2018) and adding the following new AD:

2019–15–06 Engine Alliance: Amendment 39–19699; Docket No. FAA–2019–0459; Product Identifier 2018–NE–36–AD.

(a) Effective Date

This AD is effective August 30, 2019.

(b) Affected ADs

This AD replaces AD 2018–22–07, Amendment 39–19480 (83 FR 66609, December 27, 2018).

(c) Applicability

This AD applies to all Engine Alliance (EA) GP7270, GP7272, and GP7277 model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a shop finding of axial cracks in the interstage 5–6 seal teeth of the high-pressure compressor (HPC) stages 2–5 spool spacer arm due to an incorrectly installed stage 6 seal ring. The FAA is issuing this AD to prevent failure of the HPC interstage 5–6 seal teeth and uncontained HPC stages 2–5 spool release. The unsafe condition, if not addressed, could result in an uncontained release of the HPC stages 2–5 spool, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all HPC stages 2–5 spools, perform an initial borescope inspection (BSI) of the HPC stage 6 seal ring position:

(i) Borescope inspect the HPC stage 6 seal ring location in accordance with the Accomplishment Instructions, paragraph 1.F, of EA Alert Service Bulletin (ASB) EAGP7–A72–395, Revision No. 3, dated June 3, 2019, and within the compliance times specified in Table 1 to paragraph (g)(1) of this AD or within 230 engine cycles after the effective date of this AD, whichever occurs first. If the HPC stage 6 seal ring is installed incorrectly, remove the HPC stages 2–5 spool from service within 50 engine cycles and replace with a part eligible for installation, and correct the location of the stage 6 seal ring.

(ii) Borescope inspect the HPC interstage 5–6 seal tooth forward and aft face for cracks and missing coating in accordance with the Accomplishment Instructions, paragraphs 2.C and 2.E, of EA ASB EAGP7–A72–395, Revision No. 3, dated June 3, 2019, and within the compliance times specified in Table 1 to paragraph (g)(1) of this AD or within 230 engine cycles after the effective date of this AD, whichever occurs first.

(A) If the coating is missing on the HPC interstage 5–6 seal tooth forward or aft face, thereafter, repeat the BSI required by paragraph (g)(1)(ii) of this AD for cracks within every 150 engine cycles since you performed the last BSI.

(B) If cracks are found in the HPC interstage 5–6 seal tooth forward or aft face, remove the HPC stages 2–5 spool from service and replace with a part eligible for installation before further flight.

TABLE 1 TO PARAGRAPH (g)(1)—COMPLIANCE TIMES

Cycles since new (CSN) on HPC stages 2–5 spool as of January 11, 2019 (the effective date of AD 2018–22–07)	Complete the inspection
2,499 or less	Within 900 engine cycles after January 11, 2019, but not to exceed 2,850 CSN.
2,500 to 3,499	Within 350 engine cycles after January 11, 2019, but not to exceed 3,600 CSN.
3,500 or more	Within 100 engine cycles after January 11, 2019.

(2) For HPC stages 2–5 spools listed in Table 1 of Appendix A of EA SB EAGP7–72–413, dated February 4, 2019, perform the following repetitive on-wing inspections:

(i) Borescope inspect the HPC interstage 5–6 seal tooth forward and aft face for cracks and missing coating in accordance with the Accomplishment Instructions, paragraphs 1.E. and 1.G., of EA SB EAGP7–72–413, dated February 4, 2019, within 300 engine cycles after completion of the initial inspection required by paragraph (g)(1)(ii) of this AD. If the engine has already accumulated more than 200 engine cycles since the inspection required by paragraph (g)(1)(ii) of this AD, perform this BSI of the HPC interstage 5–6 seal tooth forward and aft face within the next 100 engine cycles after the effective date of this AD, but before exceeding 500 engine cycles since the last inspection required by paragraph (g)(1)(ii) of this AD.

(A) If the coating is found missing on the HPC interstage 5–6 seal tooth forward or aft face during the BSI, thereafter, repeat the BSI required by paragraph (g)(2)(i) of this AD for cracks within every 150 engine cycles since last BSI required by paragraph (g)(2)(i).

(B) If cracks are found in the HPC interstage 5–6 seal tooth forward or aft face during the BSI, remove the HPC stages 2–5 spool from service and replace with a part eligible for installation before further flight.

(ii) Thereafter, repeat the BSI required by paragraph (g)(2)(i) of this AD at intervals not exceeding 300 engine cycles since the last BSI.

(h) Mandatory Terminating Action for HPC Stages 2–5 Spools Identified in Paragraph (g)(2) of This AD

As a terminating action to the on-wing repetitive BSI required by paragraph (g)(2) of this AD, at the next engine shop visit after the effective date of this AD, perform the following inspections and, if necessary, replacement of any HPC stages 2–5 spools listed in Table 1 of Appendix A of EA SB EAGP7–72–413, dated February 4, 2019.

(1) Visually inspect for the location of the HPC stage 6 seal ring in accordance with the Accomplishment Instructions, paragraph 1, of EA SB EAGP7–72–398, dated February 4, 2019. If the seal ring is found to be installed incorrectly, remove the HPC stages 2–5 spool and the HPC stage 6 seal ring from service and replace with parts eligible for installation.

(2) Perform an eddy current inspection (ECI) of the HPC interstage 5–6 seal teeth on the HPC stages 2–5 spool in accordance with Accomplishment Instructions, paragraph 2, of EA SB EAGP7–72–398, dated February 4, 2019. If there are ECI indications, as defined in paragraph 2 of EA SB EAGP7–72–398, remove the HPC stages 2–5 spool from service and replace with a part eligible for installation.

(3) Dimensionally inspect the diameter of the middle tooth of the HPC interstage 5–6 seal teeth on eight equally spaced points of the HPC stages 2–5 spool in accordance with the Accomplishment Instructions, paragraph 3, of EA SB EAGP7–72–398, dated February 4, 2019. If the average diameter is larger than the ''expected diameter,'' as defined in the Accomplishment Instructions, Figure 4 and Figure 5, of EA SB EAGP7–72–398, dated February 4, 2019, remove the HPC stages 2–5 spool from service and replace with a part eligible for installation.

(i) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit:

(1) Separation of engine flanges solely for the purposes of transportation of the engine without subsequent maintenance.

(2) Separation of engine flanges solely for the purpose of replacing the fan or propulsor without subsequent engine maintenance.

(j) No Reporting Requirement

The reporting requirements in the Accomplishment Instructions, paragraphs 1 and 2 of EA SB EAGP7–72–398, dated February 4, 2019, are not required by this AD.

(k) Credit for Previous Actions

You may take credit for any of the initial inspections required by paragraph (g)(1) of this AD if you performed the initial inspection before the effective date of this AD using EA ASB EAGP7–A72–395, Revision No. 2, dated August 2, 2018. The repetitive inspections required by paragraph (g)(1) of this AD are still required if the HPC stage 6 seal ring position is installed incorrectly or the HPC interstage 5–6 seal tooth forward or aft face is cracked or missing coating as determined by the initial BSI required by paragraph (g)(1).

(l) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 2018–22–07, Amendment 39–19480 (83 FR 66609, December 27, 2018) are approved as AMOCs for paragraph (g)(1) of this AD.

(m) Related Information

For more information about this AD, contact Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *Matthew.C.Smith@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Engine Alliance (EA) Alert Service Bulletin EAGP7–A72–395, Revision No. 3, dated June 3, 2019.

(ii) EA Service Bulletin (SB) EAGP7–72–413, dated February 4, 2019.

(iii) EA SB EAGP7–72–398, dated February 4, 2019.

(3) For EA service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.enginealliance portal.com.*

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

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

Issued in Burlington, Massachusetts, on August 2, 2019.

Karen M. Grant,

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

[FR Doc. 2019–17499 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe certain interest assumptions under the regulation for plans with valuation dates in September 2019. These interest assumptions are used for paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective September 1, 2019.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400 ext. 3829. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminated single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefits payment regulation to provide the rates for September 2019 measurement dates.

The September 2019 lump sum interest assumptions will be 0.50 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for August 2019, these assumptions represent no change in the immediate rate and are otherwise unchanged.

PBGC updates appendices B and C each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available for plans that rely on our publication of them each month to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during September 2019, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, rate set 311 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
311	9–1–19	10–1–19	0.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, rate set 311 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
311	9–1–19	10–1–19	0.50	4.00	4.00	4.00	7	8

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–17230 Filed 8–14–19; 8:45 am]

BILLING CODE 7709–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R08–UST–2018–0827; FRL–9997–44–Region 8]

Montana: Final Approval of State Underground Storage Tank Program Revisions, Codification and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Montana's Underground Storage Tank (UST) program submitted by the State. The EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies the EPA's approval of Montana's State program and incorporates by reference those provisions of the State's statutes and regulations that we have determined meet the requirements for approval. The EPA continues to retain its inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions in the State of Montana.

DATES: This rule is effective October 15, 2019, unless the EPA receives adverse comment by September 16, 2019. If the EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of October 15, 2019, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

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

2. *Email: Martella.Theresa@epa.gov.*

3. *Mail:* Theresa Martella, Region 8, Environmental Scientist, RCRA Branch, (8LCR–RC), Land, Chemicals and Redevelopment Division, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

4. *Hand Delivery or Courier:* Deliver your comments to Theresa Martella, Region 8, Environmental Scientist, RCRA Branch, (8LCR–RC), Land, Chemicals and Redevelopment Division, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

Instructions: Direct your comments to Docket ID No. EPA–R08–UST–2018–0827. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The Federal *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this action and associated publicly available materials from 8:30 a.m. to 4:00 p.m., Monday through Friday, at the following location: EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone number (303) 312–6329. Interested persons wanting to examine these documents should make an appointment with the office at least two days in advance.

FOR FURTHER INFORMATION CONTACT: Theresa Martella, (303) 312–6329, *Martella.Theresa@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Theresa Martella at (303) 312–6329.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Montana's Underground Storage Tank Program

A. Why are revisions to State programs necessary?

States which have received final approval from the EPA under RCRA section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal underground storage tank program. When the EPA makes revisions to the regulations that govern the Federal UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their underground storage tank program, and these changes must then be approved by the EPA.

B. What decisions has the EPA made in this rule?

On November 13, 2018, in accordance with 40 CFR 281.51(a), Montana submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Montana's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 Federal UST regulations and the 1988 State Program Approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant State statutes and regulations. We have reviewed the State Application and determined that the revisions to Montana's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Montana program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, the EPA grants Montana final approval to operate its UST program with the changes described in the program revision application and as outlined below in section I.G of this document.

C. What is the effect of this action on the regulated community?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already in effect in the State of Montana and are not changed by this action. This action merely approves the existing State regulations as meeting the federal requirements and renders them federally enforceable.

D. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action, and we anticipate no adverse comment. Montana did not receive any comments during its comment period when the rules and regulations being considered were proposed at the State level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is publishing a separate document in the ''Proposed Rules'' section of this **Federal Register** that serves as the proposal to approve the State's UST program revisions and provides an opportunity for public comment. If the EPA receives comments that oppose this approval, the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before it becomes effective. The EPA will base any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Montana previously been approved?

On March 4, 1996, the EPA finalized a rule approving the UST program that Montana proposed to administer in lieu of the Federal UST program. The State's program has not previously been codified.

G. What changes are we approving with this action and what standards do we use for review?

In order to be approved, each State program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR subpart B (Components of a Program Application); subpart C (Criteria for No Less Stringent); and subpart D (Adequate Enforcement of Compliance). This also is true for proposed revisions to approved State programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the Federal UST program and because the EPA has confirmed that the Montana UST program will continue to provide for adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D after this approval.

The Montana Department of Environmental Quality (Department) is the lead implementing agency for the UST program in Montana, except in Indian country.

The Department continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as to address releases from USTs under Montana Code Annotated (MCA) (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, part 5 Montana Underground Storage Tank Act, selected provisions from sections 75–11–501, *et seq.* and part 2 Montana Underground Storage Tank

Installer and Inspector Licensing and Permitting Act, selected provisions from sections 75–11–201, *et seq.* The Montana UST Program gets its enforcement authority from the powers of the Department of Environmental Quality found in MCA sections 75–11–203(2), (3), (6), and (7); 75–11–204(1) introductory paragraph; 75–11–218 through 75–11–220; 75–11–223; 75–11–224; 75–11–232; 75–11–504; 75–11–505(1), except (1)(f); 75–11–510 through 75–11–521; 75–11–525; and 75–11–526. Under MCA 75–11–510(2)(a), an employee or agent of the Department has the authority to enter and inspect any property premises or place where regulated substances are stored at any reasonable time. In the case of a release, MCA section 75–11–510 provides employees or agents of the Department the authority to take such action as necessary, including the authority to enter any property, premises or place where an UST is located for inspection, in order to conduct sampling and to have access to records. MCA section 75–11–505(1)(c) provides the Department with rulemaking authority for corrective action. Notice of violation may be issued and penalties for noncompliance with Montana's UST Act may be assessed under MCA section 75–11–512. Additionally, Montana's enforcement program has a policy with respect to Spill Management and Reporting that relies, for enforcement purposes, on the following statutes and the administrative rules adopted thereunder: The Comprehensive Environmental Cleanup and Responsibility Act, MCA section 75–10–701, *et seq.;* the Hazardous Waste Act, MCA section 75–10–401, *et seq.;* the Solid Waste Management Act MCA section 75–10–201, *et seq.;* and, the Water Quality Act MCA section 75–5–101, *et seq.* The State also includes requirements for delivery prohibitions in the event of noncompliance as described in Administrative Rules of Montana (ARM) section 17.56.312.

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, are found under MCA 75–11–505, in addition to the regulatory provisions of ARM Chapter 17.56 Underground Storage Tanks Petroleum and Chemical Substance, as amended effective October 6, 2018; Reporting and recordkeeping requirements are found under ARM section 17.56.305. The aforementioned statutory and regulatory sections satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Montana and the EPA, signed by the EPA Region 8 Regional Administrator on September 25, 2018, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42, including the provision that the State will not oppose intervention under Rule 24 of the Montana Code Annotated Title 25 Civil Procedure, Chapter 20 Rules of Civil Procedure, on the grounds that the applicant's interest is adequately represented by the State and the right of aggrieved parties to be admitted as party to agency proceeding. Montana has met the public participation requirements found in 40 CFR 281.42.

To qualify for final approval, revisions to a State's program must be ''equivalent to, consistent with, and no less stringent'' than the 2015 Federal Revisions. In the 2015 Federal Revisions, the EPA addressed UST systems deferred in the 1988 UST regulations and added, among other things, new operation and maintenance requirements, secondary containment requirements for new and replaced tanks and piping, operator training requirements, and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. The EPA analyzes revisions to approved State programs pursuant to the criteria found in 40 CFR 281.30 through 281.39.

The Department has revised its regulations to help ensure that the State's UST program revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions. In particular, the Department has amended the Administrative Rules of Montana to incorporate the revised requirements of 40 CFR part 280, including the requirements added by the 2015 Federal Revisions. The State, therefore, has ensured that the criteria found in 40 CFR 281.30 through 281.38 are met.

Title 40 CFR 281.39 describes the State operator training requirements that must be met in order to be considered equivalent to, consistent with, and no less stringent than Federal requirements. Montana has promulgated and is implementing its own operator training provisions under Administrative Rules of Montana section 17.56.1501, *et seq.* After a thorough review, the EPA has determined that Montana's operator training requirements are equivalent to, consistent with, and no less stringent than Federal requirements.

As part of the State Application, the Acting Chief Counsel of the Montana Department of Environmental Quality certified that the laws provide adequate authority to carry out the ''no less stringent'' technical requirements submitted by the State in order to meet the criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

For further information on the EPA's analysis of the State's application, see the chart in the Technical Support Document (TSD) contained in the docket for this rulemaking.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following regulatory requirements are considered broader in coverage than the Federal program. These regulations are not required by Federal regulation and so are implemented by the State in addition to the federally approved program:

Administrative Rules of Montana (ARM) Title 17 Environmental Quality, chapter 56 Underground Storage Tanks Petroleum and Chemical Substances, section 17.56.102(3)(e), because the State applies the provision to aboveground storage tanks (ASTs).

Sections 17.56.903(3) and 17.56.1001 are broader in scope because fees are not imposed by the Federal program.

Section 17.56.402(1)(a)(iii) is broader in scope because the State regulates farm and residential tanks used for storing motor fuel for noncommercial purposes and heating oil for consumptive use, and emergency power generator tanks by requiring yearly tank gauging, which the Federal program does not require.

Sections 17.56.308, 17.56.310, 17.56.701(4), 17.56.1502(1), and subchapter 13, sections 1301 through 1309 are broader in scope because these regulations contain provisions relative to State-only operating permits not required by the Federal program.

Subchapter 14, sections 1401 through 1426, is broader in scope because the State requires State-only licensing of UST installers not required by the Federal program.

The following statutory provisions are considered broader in scope than the

Federal program, as these State-only program elements do not have counterparts in the Federal program and are implemented by the State in addition to the federally approved program:

Under Montana Code Annotated Chapter 75–11:

Sections 75–11–203(1), (4), (5), (8)–(10), (14), and (15); 75–11–204(1)(a)–(h) and (2); 75–11–209 through 75–11–214; 75–11–225 through 75–11–227; 75–11–503(8) ''underground storage tank'' or ''tank'' as it applies to aboveground storage tanks; 75–11–505(1)(f); and 75–11–509.

More Stringent Provisions

Where an approved State program includes requirements that are considered more stringent than required by Federal law, the more stringent requirements become part of the federally approved program (40 CFR 281.12(a)(3)(i)).

The following regulatory requirements are considered more stringent than the Federal program, and on approval, they become part of the federally approved program and are federally enforceable:

Under Administrative Rules of Montana (ARM) 17.56:

At section 17.56.104, Montana subjects very small tanks (*i.e.,* those 100 gallons or less) to standards that these small tanks are not subjected to under the Federal program, making the State requirements more stringent in this respect.

Montana does not have an analog to the following Federal requirements which allow certain USTs or UST systems to be installed without or with limited corrosion protection in specific circumstances: §§ 280.11(b), 280.20(a)(4), 280.20(b)(3), 280.34(b)(1). Because Montana requires that all UST systems be installed with corrosion protection, the State is more stringent than the Federal program for these requirements.

At section 17.56.304(3)(c) and (d), Montana includes additional State-only requirements regarding manufacturer warranty and the possibility of excavation of an UST for repair that are not in the Federal UST regulations; therefore, the State is more stringent than the Federal program.

At the introductory paragraphs of sections 17.56.407(1)(e) and (1)(f), Montana includes the requirement that vapor and groundwater monitoring as forms of release detection, respectively, will only be allowed until October 13, 2023. These limitations are not found in the Federal program, making Montana more stringent.

At 17.56.407(1)(d)(ii), (1)(e)(viii), (1)(f)(x), (1)(g)(i)(B) and 17.56.408(2), the State requires the use of a leak-detection console to temporarily disable pumping systems attached to tanks and piping that have failed a leak test, making the State provision more stringent than the Federal program.

At 17.56.408(3) and (4), Montana requires piping for UST systems installed after the (compliance deadline) to employ interstitial monitoring as the primary release detection method; whereas, the Federal program allows other methods, making the State provision more stringent than the Federal program.

At 17.56.409(1)(d) through (1)(f), the State has additional recordkeeping requirements associated with release detection, making the State provision more stringent than the Federal program.

At 17.56.602(1)(d), Montana requires that a free product removal report be submitted within 30 days; whereas, the Federal program allows up to 45 days for this submittal. This makes the State provision more stringent than the Federal program.

At 17.56.701(2) and 17.56–702(2), Montana has additional, more stringent closure requirements not found in the Federal program: Requiring temporarily closed tanks to be emptied and not allowing the closure in place of permanently closed tanks, respectively.

At 17.56.825, Montana does not allow owners/operators of UST facilities undergoing a change in service to use this as a factor to release those individuals from financial responsibility requirements as they would be under the Federal program, making the State provision more stringent than the Federal program.

At 17.56.1504, Montana requires that facilities' training records be kept for at least 3 years after the trained individual served as an operator at a facility, in lieu of the Federal requirements that facilities keep these records only as long as the individuals are designated as an operator; in other words, a timeline that ends when an individual leaves a particular facility.

At 17.56.205, Montana has a State-only provision that requires anti-siphon equipment in certain circumstances to prevent releases at facilities, making the State provision more stringent than the Federal program.

At 17.56.506 Montana requires an additional State-only notification for confirmed releases in addition to the federally mandated suspected release and initial abatement reporting of 280 subparts E and F, making the State provision more stringent than the Federal program.

I. How does this action affect Indian country (18 U.S.C. 1151) in Montana?

The EPA's approval of Montana's program, including this action, does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes lands within the exterior boundaries of the following Indian reservations located within Montana: The Blackfeet, Crow, Flathead, Fort Belknap, Fort Peck, Northern Cheyenne and Rocky Boys, any land held in trust by the United States for an Indian tribe, and any other areas that are ''Indian country'' within the meaning of 18 U.S.C. 1151. Any lands removed from an Indian reservation status by Federal court action are not considered reservation lands, even if located within the exterior boundaries of an Indian reservation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. *See* 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's approved UST program into the CFR. section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of State programs in 40 CFR part 282 and incorporates by reference State regulations that the EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved State program and State requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each State.

B. What is the history of codification of Montana's UST program?

The EPA has not previously incorporated by reference and codified Montana's approved UST program. Through this action, the EPA is incorporating by reference and codifying Montana's State program in 40 CFR 282.76 to include the program and the approved revisions.

C. What codification decisions have we made in this rule?

In this rule we are finalizing the Federal regulatory text that incorporates by reference the federally authorized Montana UST program. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Montana rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and/or in hard copy at the EPA Region 8 office (see the **ADDRESSES** section of this preamble for more information).

One purpose of this **Federal Register** document is to codify Montana's approved UST program. The codification reflects the State program that would be in effect at the time the EPA's approved revisions to the Montana UST program addressed in this direct final rule become final. If, however, the EPA receives substantive comment on the proposed rule, then this codification will not take effect, and the State rules that are approved after the EPA considers public comment will be codified instead. By codifying the approved Montana program and by amending the Code of Federal Regulations (CFR), the public will more easily be able to discern the status of the federally approved requirements of the Montana program.

The EPA is incorporating by reference the Montana approved UST program in 40 CFR 282.76. Section 282.76(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's regulations. Section 282.76 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of EPA's codification of the federally authorized State UST program on enforcement?

The EPA retains the authority under sections 9003(h), 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Montana, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures, rather than the State analogs. Therefore, though the EPA has approved the State procedures listed in 40 CFR 282.76(d)(1)(ii), the EPA is not incorporating by reference Montana's procedural and enforcement authorities.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are ''broader in coverage'' than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved State program has provisions that are broader in coverage than the Federal program, those provisions are not a part of the federally approved program. As a result, state provisions which are ''broader in coverage'' than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Title 40 CFR 282.76(d)(1)(iii) lists for reference and clarity the Montana statutory and regulatory provisions which are ''broader in coverage'' than the Federal program and which are not, therefore, part of the approved program being codified. Provisions that are ''broader in coverage'' cannot be enforced by EPA. The State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (E.O.) Reviews

This action only applies to Montana's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable E.O.s and statutory provisions as follows:

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

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and 13563 (76 FR 3821, Jan. 21, 2011). This action approves and codifies state requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by OMB.

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

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Montana's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action 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, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA Underground Storage Tank Program without altering the relationship or the distribution of power and responsibilities established by RCRA.

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

This action is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), the EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

The EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

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

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, consistent with, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, 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 document 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 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). However, this action will be effective October 15, 2019 because it is a direct final rule.

Authority: This rule is issued under the authority of sections 2002(a), 7004(b), and 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, State program approval, and Underground storage tanks.

Dated: August 7, 2019.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 reads as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Add § 282.76 to read as follows:

§ 282.76 Montana State-Administered Program.

(a) *History of the approval of Montana's Program.* The State of Montana is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991, *et seq.* The State's program, as administered by the Montana Department of Environmental Quality (MDEQ), was approved by the EPA pursuant to 42 U.S.C. 6991c and Part 281 of this chapter. The EPA published the notice of final determination approving the Montana underground storage tank base program effective on March 4, 1996. A subsequent program revision application was approved by the EPA and became effective on October 15, 2019.

(b) *Enforcement authority.* Montana has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, the EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retention of program approval.* To retain program approval, Montana must revise its approved program to adopt new changes to the Federal Subtitle I program, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Montana obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) *Final approval.* Montana has final approval for the following elements of its program application originally submitted to the EPA and approved effective March 4, 1996, and the program revision application approved by EPA effective on October 15, 2019:

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The material cited in this paragraph is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Montana statutes and regulations that are incorporated by reference in this paragraph from Montana Legislative Services Division, P.O. Box 201706, Helena, MT 59620–1706; Phone number: (406) 444–3064; email: *LegPubSales@mt.gov;* website: *https://leg.mt.gov/statute/,* and Montana's Secretary of State's Administrative

Rules Services, P.O. Box 202801, Helena, MT 59620–2801; Phone number: 406–444–9000; email: *sosarm@mt.gov;* website: *http://www.mtrules.org/.*

(A) ''EPA-Approved Montana Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program'' dated May 2019.

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which provide the legal basis for the State's implementation of the underground storage tank program, but they are not being incorporated by reference and do not replace Federal authorities:

(A) The statutory provisions include:

(*1*) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 2 Underground Storage Tank Installer and Inspector Licensing and Permitting Act.* Sections 75–11–203(2), (3), (6), and (7); 75–11–204(1) introductory paragraph; 75–11–218 through 75–11–220; 75–11–223; 75–11–224; and 75–11–232;

(*2*) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 5 Montana Underground Storage Tank Act.* Sections 75–11–504; 75–11–505(1); 75–11–510 through 75–11–521; 75–11–525; and 75–11–526; and

(*3*) *Additional statutes.* The following additional statutes that the State relies on for its enforcement program with respect to Spill Management and Reporting: The Comprehensive Environmental Cleanup and Responsibility Act, MCA section 75–10–701 *et seq.;* the Hazardous Waste Act, MCA Section 75–10–401 *et seq.;* the Solid Waste Management Act MCA section 75–10–201 *et seq.;* and, the Water Quality Act MCA section 75–5–101 *et seq.*

(B) The regulatory provisions include:

(*1*) *Administrative Rules of Montana (October 6, 2018), Title 17 Department of Environmental Quality, Chapter 56 Underground Storage Tanks Petroleum and Chemical Substances.* Section 17.56.105 Variances; 17.56.309 Requirements for Compliance Inspections; 17.56.311 Permanent Non-Expiring Tags; 17.56.312 Delivery Prohibition; 17.56.508 Numbering Petroleum Releases; section 17.56.606 Public Participation; 17.56.607 Release Categorization; and 17.56.706 Requirement to empty noncompliance USTs.

(*2*) [Reserved]

(iii) *Provisions not incorporated by reference.* The following specifically identified statutes and rules applicable to the Montana underground storage tank program that are broader in coverage than the Federal program, are not part of the approved program, and are not incorporated by reference in this part for enforcement purposes:

(A) *Administrative Rules of Montana (October 6, 2018), Title 17 Department of Environmental Quality, Chapter 56 Underground Storage Tanks Petroleum and Chemical Substances.* Sections 17.56.102(3)(e); 17.56.308; 17.56.310; 17.56.402(1)(a)(iii); 17.56.701(4); 17.56.903(3); 17.56.1001; and 17.56.1502(1) as it applies to permits; subchapter 13, sections 17.56.1301 through 17.56.1309 and subchapter 14, sections 17.56.1401 through 17.56.1426.

(B) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 5 Montana Underground Storage Tank Act.* Sections 75–11–203(1), (4), (5), (8)–(10), (14), and (15); 75–11–204(1)(a)–(h) and (2); 75–11–209 through 75–11–214; 75–11–225 through 75–11–227; 75–11–503(8) ''underground storage tank'' or ''tank'' as it applies to aboveground storage tanks; 75–11–505(1)(f); and 75–11–509.

(2) *Statement of legal authority.* The Attorney General's Certification, signed by the Acting Chief Counsel, Special Assistant Attorney General for the State of Montana on November 13, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of the original application on February 22, 1995, and as part of the program revision application on November 13, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on February 22, 1995, and as part of the program revision application on November 13, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 8 and the Montana Department of Environmental Quality, signed by the EPA Regional Administrator on September 25, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to part 282 is amended by adding an entry for Montana in alphabetical order by State to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Montana

(a) The statutory provisions include:

(1) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 2 Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act:* Sections 75–11–203(11) ''operator'' 75–11–203(12) ''owner''.

(2) *Montana Code Annotated (2017), Title 75 Environmental Protection, Chapter 11 Underground Storage Tanks, Part 5 Montana Underground Storage Tank Act:* Sections 75–11–503(4) ''person'', (8) ''underground storage tank'' or ''tank'', except as it applies to aboveground storage tanks.

(b) The regulatory provisions include:

(1) *Administrative Rules of Montana (October 6, 2018), Title 17 Department of Environmental Quality, Chapter 56 Underground Storage Tanks Petroleum and Chemical Substances:*

Subchapter 1 General Provisions:

Sections 17.56.101 Definitions; 17.56.102 Applicability, except 17.56.102(3)(e); 17.56.104 Tank Standards for Excluded UST Systems;

Subchapter 2 UST Systems: Design, Construction, and Installation:

Section 17.56.201 Performance Standards for New Tank Systems; 17.56.202 Upgrading of Existing UST Systems; 17.56.203 Additional Performance Standards for New Underground Piping Connected to Aboveground Tanks or to Underground Tanks with a Capacity of 660 Gallons or Less Used to Store Heating Oil; 17.56.204 Secondary Containment, Under-Dispenser Containment, and Interstitial Monitoring; 17.56.205 Anti-Siphon Requirements;

Subchapter 3 General Operating Requirements:

Sections 17.56.301 Spill and Overfill Control; 17.56.302 Operation and Maintenance of Corrosion Protection; 17.56.303 Compatibility; 17.56.304 Repairs; 17.56.305 Reporting and Recordkeeping; 17.56.306 Periodic Testing of Spill Prevention Equipment and Containment Sumps Used for Interstitial Monitoring of Piping and Periodic Inspection of Overfill Prevention Equipment; 17.56.307 Periodic Operation and Maintenance Walkthrough Inspections;

Subchapter 4 Release Detection:

Sections 17.56.401 General Requirements for all UST Systems; 17.56.402 Requirements for Petroleum UST Systems, except 17.56.402(1)(a)(iii); 17.56.403 Requirements

for Hazardous Substance UST Systems; 17.56.407 Methods of Release Detection for Tanks; 17.56.408 Methods of Release Detection for Piping; 17.56.409 Release Detection Recordkeeping;

Subchapter 5 Release Reporting, Investigation, and Confirmation:

Sections 17.56.501 General; 17.56.502 Reporting of Suspected Releases; 17.56.503 Investigation Due to Off-site Impacts; 17.56.504 Release Investigation and Confirmation Steps; 17.56.505 Reporting and Cleanup of Spills and Overfills; 17.56.506 Reporting of Confirmed Releases; 17.56.507 Adoption by Reference;

Subchapter 6 Release Response and Corrective Action for Tanks Containing Petroleum or Hazardous Substances:

Sections 17.56.601 General; 17.56.602 Initial Response and Abatement Measures; 17.56.603 Initial Site History; 17.56.604 Remedial Investigation; 17.56.605 Cleanup Plan; 17.56.608 Adoption by Reference;

Subchapter 7 Out-of-Service UST Systems and Closure:

Sections 17.56.701 Inactive and Out-of-Service UST Systems, except 17.56.701(4); 17.56.702 Permanent Closure and Changes in Service; 17.56.703 Assessing the Site at Closure or Change in Service; 17.56.704 Applicability to Previously Closed UST Systems; 17.56.705 Closure Records;

Subchapter 8 Financial Responsibility:

Sections 17.56.801 Applicability; 17.56.802 Compliance Dates; 17.56.803 Definition of Terms; 17.56.804 Incorporation by Reference; 17.56.805 Amount and Scope of Required Financial Responsibility; 17.56.806 Allowable Mechanisms and Combinations of Mechanisms; 17.56.807 Financial Test of Self-Insurance; 17.56.808 Guarantee; 17.56.809 Insurance and Risk Retention Group Coverage; 17.56.810 Surety Bond; 17.56.811 Letter of Credit; 17.56.815 Montana Petroleum Tank Release Cleanup Fund; 17.56.816 Trust Fund; 17.56.817 Standby Trust Fund; 17.56.820 Substitution of Financial Assurance Mechanisms by Owner or Operator; 17.56.821 Cancellation or Nonrenewal by a Provider of Financial Assurance; 17.56.822 Reporting by Owner or Operator; 17.56.823 Recordkeeping; 17.56.824 Drawing on Financial Assurance Mechanisms; 17.56.825 Release from the Requirements; 17.56.827 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance; 17.56.828 Replenishment of Guarantees, Letters of Credit, or Surety Bonds;

Subchapter 9 Notification:

Sections 17.56.901 Interim Notification Requirements; 17.56.902 Notification Requirements; 17.56.903 Change in Ownership, except 17.56.903(3);

Subchapter 15 Underground Storage Tank Operator Training:

Sections 17.56.1501 Operator Training Definitions; 17.56.1502 Operator Training, except the permit requirement in 17.56.1502(1); 17.56.1503 Operator Training: Authorized Providers; and Required Subjects; 17.56.1504 Operator Training: Recordkeeping; 17.56.1505 Operator Training: Third-Party Training Course Approval; and

Subchapter 16 Underground Storage Tank Systems with Field Constructed Tanks:

Section 17.56.1601 UST Systems with Field Constructed Tanks and Airport Hydrant Fuel Distribution Systems;

(c) Copies of the Montana statutes and regulations that are incorporated by reference are available from the following offices:

Statutes—Montana Legislative Services Division, P.O. Box 201706, Helena, MT 59620–1706; Phone number: 406–444–3064; email: *LegPubSales@mt.gov;* website: *https://leg.mt.gov/statute/.*

Regulations—Secretary of State's Administrative Rules Services, P.O. Box 202801, Helena, MT 59620–2801; Phone number: 406–444–9000; email: *sosarm@mt.gov;* website: *http://www.mtrules.org/.*

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[FR Doc. 2019–17408 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 84, No. 158

Thursday, August 15, 2019

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 74, 75 and 150

[NRC–2019–0108]

Revision to NUREG/BR–0006 and NUREG/BR–0007

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREGs; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft NUREGs, NUREG/BR–0006, Revision 9, ''Instructions for Completing Nuclear Material Transaction Reports,'' and NUREG/BR–0007, Revision 8, ''Instructions for the Preparation and Distribution of Material Status Reports.'' These NUREG brochures provide guidance for licensees submitting material transaction reports and material status reports to the Nuclear Materials Management and Safeguards System (NMMSS). Revisions to these NUREGs do not change existing reporting requirements; however, clarifications and additional examples of data to be reported have been included in these revised drafts.

DATES: Submit comments by November 13, 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 any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0108. 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: Mirabelle Shoemaker, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7363, email: *Mirabelle.Shoemaker@nrc.gov;* 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–2019–0108 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–2019–0108.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, 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 ''Instructions for Completing Nuclear Material Transaction Reports,'' NUREG/BR–0006 and ''Instructions for and the Preparation and Distribution of Material Status Reports,'' NUREG/BR–0007 are available in ADAMS under Accession Nos. ML19214A180 and ML19212A768.
- *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–2019–0108 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. Discussion

NUREG/BR–0006 and NUREG/BR–0007 provide instructions for reporting information to the Nuclear Materials Management and Safeguards Systems (NMMSS), as required by NRC regulations. The NRC is revising these documents to provide additional clarification and examples of nuclear material transaction reports and nuclear material status reports, to aid the licensee community in preparing clear and accurate submittals. The draft revisions of these NUREGs are being made available for public comments to allow opportunity for further suggestions to improve their clarity and utility.

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

For the Nuclear Regulatory Commission.

James L. Rubenstone,

Chief, Material Control and Accounting Branch, Division of Fuel Cycle Safety Safeguards and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–17514 Filed 8–14–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 600

Development of Nuclear Energy Technologies and Collaboration With States on Nuclear Development, Petitions for Rulemaking

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Petitions for rulemaking; request for comment.

SUMMARY: On November 18, 2018 and January 29, 2019, the Department of Energy (DOE) received similar petitions from Ms. Jill Adams and the State of Ohio, respectively, asking DOE to allow States and their agents to collaboratively develop new nuclear technologies with DOE, and under the authority of DOE, to include the development of small nuclear reactors. The petitions further request that DOE promulgate rules and establish programs that would allow States to develop collaborative nuclear and non-nuclear laboratories with DOE on currently licensed or formerly licensed nuclear facility grounds, and allow for the construction of collaborative nuclear experimentation containment facility testing platforms. Through this notice, DOE seeks comment on the petitions, as well as any data or information that could be used in DOE's determination on whether to proceed with the petitions.

DATES: Written comments and information are requested on or before November 13, 2019.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Nuclear Petitions,'' by any of the following methods:

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

Email: [*NuclearPetitions@hq.doe.gov*] Include ''Nuclear Petitions'' in the subject line of the message.

Postal Mail: Mark Yale, Office of Nuclear Energy, U.S. Department of Energy, Mailstop 5A–148, 1000 Independence Avenue SW, Washington, DC 20585. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Mark Yale, Office of Nuclear Energy, U.S. Department of Energy, Mailstop 5A–148, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–7856. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Yale, U.S. Department of Energy, Office of Nuclear Energy, Mailstop 5A–148, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–7856. Email: *Mark.Yale@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: 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)) DOE received similar petitions from Ms. Jill Adams and the State of Ohio, as described in this notice and set forth verbatim below, requesting that DOE issue regulations to (1) allow States and their agents to collaboratively develop new nuclear technologies with DOE, and under the authority of DOE, to include the development of small nuclear reactors, and (2) establish programs that would allow States to develop collaborative nuclear and non-nuclear laboratories with DOE on currently licensed or formerly licensed nuclear facility grounds, and allow for the construction of collaborative nuclear experimentation containment facility testing platforms. The petitioners argue that DOE should take such actions pursuant to the authority granted by the Atomic Energy Act of 1954, Public Law 83–703, as amended. Petitioners cite various provisions found at 42 U.S.C. 2013 and 2021 in support of this position. In publishing these petitions for public comment, DOE is seeking views on whether it should grant the petitions and undertake a proposed rulemaking or other appropriate action. By seeking comment on whether to grant these petitions, DOE takes no position at this time regarding the merits of the suggested rulemaking or the assertions made by the Petitioner.

DOE welcomes comments and views of interested parties on any aspect of the petitions.

Submission of Comments

DOE invites all interested parties to submit in writing by November 13, 2019 comments and information regarding these petitions.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information prior to submitting comments. Your contact information will be viewable to DOE Building Technologies 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 via email, hand delivery, or postal mail will also 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 in your cover letter each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted 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 include any 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. Pursuant 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 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 its process for considering rulemaking petitions. DOE actively encourages the participation and interaction of the public during the comment period. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in determining how to proceed with a petition. Anyone who wishes to be added to DOE's mailing list to receive future notices and information about this petition should contact Office of Nuclear Energy program staff at (202) 586–7856 or via email at *Mark.Yale@hq.doe.gov.*

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of petitions for rulemaking.

Signed in Washington, DC, on May 14, 2019.

Edward McGinnis,

Principal Deputy Assistant Secretary, Nuclear Energy.

BILLING CODE 6450–01–P

Attn: John T. Lucas General Counsel, GC-1

U.S. Department of Energy

1000 Independence Avenue, SW.

Washington, DC 20585.

Cc:

Eric J. Fygi, Deputy General Counsel, at eric.fygi@hq.doe.gov

Mary Therese Keokuk, Executive Assistant to the Deputy General Counsel, at therese.keokuk@hq.doe.gov

Daniel Cohen, Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, at daniel.cohen@hq.doe.gov

Elizabeth Kohl, Deputy Assistant General Counsel for Legislation and Regulation, at elizabeth.kohl@hq.doe.gov.

UNITED STATES DEPARTMENT OF ENERGY

In the Matter of Proposed Rulemaking Regarding the **Creation of New Rules**

PETITION FOR RULEMAKING

This Petition for Rulemaking is submitted pursuant to The Administrative Procedure Act, 5 U.S.C. 551, and 553, requires each federal agency to "give an interested person the right to petition for the issuance, amendment, or repeal of a rule" and defines a "person" to include an individual, partnership, corporation, association, or public or private organization other than an agency.

STATEMENT OF PETITIONER'S INTEREST

I, Jill Adams am a librarian who lives in Oregon. I am interested in anything we can do to reduce greenhouse gas emissions. Nuclear energy is a good way to achieve this but it needs policy to go with it. Terrapower and Nuscale energy companies in the Pacific Northwest could operate more easily and develop things faster if this petition is received favorably.

BACKGROUND

Federal agencies have failed to provide a domestic program of research and development for nuclear technologies to encourage maximum scientific and industrial progress allowing other nations to become the world leaders in nuclear and energy diplomacy. This failure has compromised America's safety and security and put states at a competitive disadvantage to foreign countries in producing new nuclear technologies. **Federal policies with states are not consistent with international arrangements and agreements of cooperation.**

Providing a regulatory pathway that removes much of the potential for litigation during the research and development phase of a technology allows private industry to better prove technologies and reduce investor risks. Such a pathway would allow America to bring many more nuclear technologies at an accelerated pace.

Countries around the world — particularly China, Russia, India, and developing nations — see the benefits of developing new nuclear technology and are poised to increase their nuclear production.

Unfortunately, projections by the Energy Information Agency show a diminishing U.S. nuclear presence as closures of reactors mount. To improve the human condition — ensuring clean air, clean water, and a robust economy — nuclear energy should be a part of America's diverse energy mix. The failure to innovate within the nuclear industry and produce newer more cost effective technologies and allow current nuclear power plants to produce income streams other than those from electricity generation; have prevented the nuclear industry from competing against other technologies such as natural gas.
Nuclear energy is simply more reliable than all other sources of energy except geothermal. It has the ability to operate at full capacity 90 percent of the time. By contrast, solar energy can only sustain maximum output less than one-third of the time and wind generation just about half of the time because the sun isn't always shining and the wind isn't always blowing. Another source of energy must always be ready to back up unreliable renewables, which is often coal and natural gas.

Nuclear power has even proved its reliability in the face of devastating conditions. A two-reactor nuclear power plant located near Houston, known as the South Texas Project, took a direct hit from the Category 4 Hurricane Harvey. While Texas' wind farms quickly cut off generation due to high winds, the nuclear power plant continued providing power at capacity for struggling communities during the disaster.

In other words, nuclear provided electricity when Texans needed it most.

While states have their own development programs for other energy technologies (coal, oil, gas, wind, and solar); the federal government has a near monopoly in the development of new nuclear technologies.

The federal government has failed to recognize substantively the interest of the states to develop new nuclear technologies for peaceful uses.

The federal government should remove barriers to the research and development of nuclear technologies so that states can provide scientific diversity and aid in accelerating the development of new nuclear technologies. This will help provide Americans with a program of maximum development and an energy future that is not only clean, affordable, and reliable, but also powers their lives and their potential for flourishing.

GROUNDS FOR PROPOSED ACTION

The United States has fallen behind or is falling behind the rest of the world in building nuclear reactors and developing new nuclear technologies. The United States has not come close to the rate of building and planning of nuclear power plants under the Atomic Energy Commission (AEC) which was formed in 1946 and dissolved in 1974. In 1974 the Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission (NRC) legally split the duties of the AEC. The ERDA was to take on the research and development activities of the AEC and the NRC was to take on the safety and regulatory aspects of the defunct AEC. In 1977, Congress saw fit to dissolve the ERDA and consolidate the Federal Energy Administration, the ERDA, the Federal Power Commission, and programs of various other agencies into the Department of Energy (DOE).

What was lost in the dissolution of the AEC were a number of key issues that remain unresolved to this day. The 1954 Atomic Energy Act (AEA) amended the 1946 Atomic Energy Act and is still the core piece of legislation that drives the regulation of the nuclear industry. Included within the language of the 1954 Atomic Energy Act:

- Required the AEC to ***"recognize the interests of the States in the peaceful uses of atomic energy"*** U.S. Code 42 Section 2021.
- Required the AEC to ***"promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development"*** U.S. Code 42 Section 2021.
- Required the AEC to create ***"a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress"*** U.S. Code 42 Section 2013.
- Required the AEC to ***"create a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation"*** U.S. Code 42 Section 2013.

Many of these legal requirements, as laid out by Congress in 1954 are not being met since the AEC was dissolved.

STATEMENT IN SUPPORT OF PROPOSED ACTION

While the NRC has developed rules that allow states to regulate source material and byproducts, it has failed to recognize the interests of states to develop new nuclear technologies and to encourage maximum scientific and industrial progress. The NRC however, has correctly identified that its mission is only concerned with safety and regulation; not development. Providing a program that encourages maximum scientific and industrial progress most correctly falls under the umbrella of the DOE. We believe a proper interpretation of the law is that the authority of the DOE can be extended to states in collaborative research and development agreements per the 1954 AEA mandate to recognize the states interest in developing nuclear technologies for peaceful uses and the provision for providing a program of maximum development. We do not believe DOE authority can extend to commercial activity unless the NRC has previously authorized such activity such as in the production of medical isotopes from research reactors -or- the DOE developed reactor is a demonstration reactor that aids in determining real world feasibility.

PROPOSED ACTION

I, Jill Adams hereby petitions the United States Department of Energy, under its authority, to promulgate rules and establish programs that will allow states and their agents to collaboratively develop new nuclear technologies with the United States Department of Energy, and under the authority of the United States Department of Energy, including, but not limited to, the development of small nuclear reactors that are designed to produce ten megawatts or less of thermal energy, thus providing for a program of maximum development that recognizes the interests of states.

I, Jill Adams hereby petitions the USDOE to promulgate rules and programs that will allow states to develop collaborative nuclear and non-nuclear laboratories with the United States Department of Energy on currently licensed or formerly licensed nuclear facility grounds, within their respective states, and allow for the construction of collaborative nuclear experimentation containment facility testing platforms.

CERTIFICATION

The following is a true and correct copy.

Clerk, Ohio House of Representatives

(132nd General Assembly) (House Resolution Number 518)

A RESOLUTION

To petition the United States Department of Energy to promulgate rules and establish programs allowing states, in collaboration with the Department, to develop new nuclear technologies and laboratories and construct nuclear experimentation containment facility testing platforms.

Be it resolved by the House of Representatives of the State of Ohio:

WHEREAS, The United States Department of Energy (USDOE) has nuclear energy development agreements with foreign nations such as China; and

WHEREAS, The State of Ohio has the sovereign right to protect its citizens, protect its environment, and improve its economy, if doing so does not negatively affect any other state within the United States; and

WHEREAS, The federal government has failed to provide for a national long-term repository for our nation's high-level nuclear waste; and

WHEREAS, Ohio's nuclear reactors produce high-level nuclear waste, and this waste is currently stored on-site in temporary facilities; and

WHEREAS, The federal government has failed to provide a stable, secure, and economically viable supply of medical isotopes; and

WHEREAS, Ohio's hospitals use lifesaving medical isotopes in diagnostic imaging and in the treatment of diseases such as cancer; and

WHEREAS, There are known technologies, and new fields of study that are developing technologies, that can consume high-level nuclear waste and produce medical isotopes; and

WHEREAS, 42 U.S.C. 2013 directs authorized federal agencies to:

(A) Encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security of the nation and with the health and safety of the public in mind; and

(B) Administer domestic activities and programs consistent with the policies and programs for nuclear activities, with international arrangements, and with agreements for cooperation; and

WHEREAS, 42 U.S.C. 2021 provides:

(A) That the federal government and its authorized agencies must do the following:

(1) Recognize the interests of the states in the peaceful uses of atomic energy; and

(2) Promote an orderly regulatory pattern with respect to nuclear development, without federally exclusive powers to develop nuclear technologies, and within federally defined regulatory powers overseeing the handling and storage of nuclear materials; and

(B) That, as the states improve their capabilities to regulate effectively such nuclear materials, additional legislation may be desirable; and

WHEREAS, 42 U.S.C. 2021 provides for the establishment of procedures and criteria for discontinuance of certain federal regulatory responsibilities with respect to byproduct, source, and

special nuclear materials, and the assumptionofthose responsibilities by the states; and

WHEREAS, 42 U.S.C. 5801 transferred the authority for the development of nuclear technology from the Atomic Energy Commission to the Energy Research and Development Administration, and 42 U.S.C. 7151 transferred the authority from the Energy Research and Development Administration to the USDOE, and 42 U.S.C. 5841 transferred the licensing and regulation of nuclear reactors from the Atomic Energy Commission to the United States Nuclear Regulatory Commission (USNRC); and WHEREAS, The Administrative Procedure Act, 5 U.S.C. 551, and 553, requires each federal agency to "give an interested person the right to petition for the issuance, amendment, or repeal of a rule" and defines a "person" to include an individual, partnership, corporation, association, or public or private organization other than an agency; and

WHEREAS, The House of Representatives of the State of Ohio is a public organization other than an agency of the federal government and is recognized as a person by the Administrative Procedure Act, 5 U.S.C. 551, and therefore has the legal right to petition federal agencies regarding the issuance of rules; and

WHEREAS, Directives from Congress to the USNRC to provide safety, and to the USDOE to provide for a program of maximum development of nuclear technologies, are in opposition to each other, if taken to an extreme; and

WHEREAS, The widespread domestic participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with international arrangements and international agreements of cooperation is largely dependent upon the cost of regulation; and

WHEREAS, Regulations promulgated by the USNRC have become so prohibitively expensive that they prevent the maximum development of nuclear technologies; and

WHEREAS, The intent of the laws passed by the United States Congress is clear that as states gain greater expertise with nuclear materials, they should be allowed greater research and development autonomy consistent with international arrangements and that of international agreements of cooperation; and

WHEREAS, The House of Representatives of the State of Ohio recognizes that the decentralization of nuclear research and development from the federal government to the states will help to accelerate innovation in the development of nuclear technologies and allow the United States to once again lead the world in the development of nuclear technologies; and

WHEREAS, It is not the purpose or mission of the USNRC to:

(A) Provide and encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security of the nation;

(B) Provide a program administering domestic activities and programs consistent with policies and programs of nuclear activities, with international arrangements, and with international agreements for cooperation; and

(C) Recognize the interests of the states in the development of peaceful uses of atomic energy; and

WHEREAS, The State of Ohio has the sovereign right to research and develop new nuclear technologies for peaceful purposes, to improve the Ohio economy, to ensure a stable

supply of isotopes for Ohio citizens, to reduce and consume high-level nuclear waste, and to generate energy for Ohioans; and

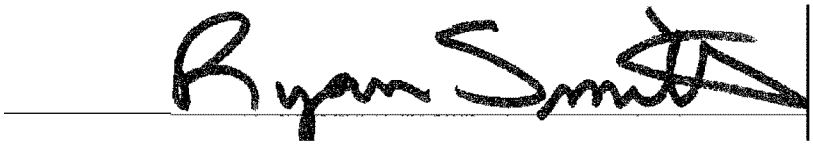
WHEREAS, The State of Ohio has an interest in developing new nuclear technologies to produce medical isotopes, industrial isotopes, isotopes for space exploration, and isotopes for the peaceful defense of our nation; technologies to consume nuclear waste produced in Ohio; and safer and more cost-effective nuclear technologies that produce zero carbon energy and less high-level nuclear waste than traditional light water reactors; now therefore be it

RESOLVED, That we, the members of the House of Representatives of the 132nd General Assembly of the State of Ohio, hereby petition the USDOE, under its authority, to promulgate rules and establish programs that will allow states and their agents to collaboratively develop new nuclear technologies with the USDOE, including, but not limited to, the development of small nuclear reactors that are designed to produce ten megawatts or less of thermal energy, thus providing for a program of maximum development that recognizes the interests of states; and be it further

RESOLVED, That we, the members of the House of Representatives of the 132nd General Assembly of the State of Ohio, hereby petition the USDOE to promulgate rules and programs that will allow states to develop collaborative nuclear and non-nuclear laboratories with the USDOE on currently licensed or formerly licensed nuclear facility grounds, within their respective states, and allow for the construction of collaborative nuclear experimentation containment facility testing platforms; and be it further

RESOLVED, That the Clerk of the House of Representatives transmit duly authenticated copies, formatted according to USDOE rules for rulemaking petitions, by registered postal mail or by any other means that confirms delivery, receipt, and acceptance of this petition to the USDOE Office of the General Counsel, GC-1, Attention: John T. Lucas, United States Department of Energy, 1000 Independence Avenue, S.W., Washington D.C. 20585; and be it further

RESOLVED, That the Clerk of the House of Representatives transmit electronic copies to: Eric J. Fygi, Deputy General Counsel, at eric.fygi@hq.doe.gov; Mary Therese Keokuk, Executive Assistant to the Deputy General Counsel, at therese.keokuk@hq.doe.gov; Daniel Cohen, Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, at daniel.cohen@hq.doe.gov; and Elizabeth Kohl, Deputy Assistant General Counsel for Legislation and Regulation, at elizabeth.kohl@hq.doe.gov.



Speaker____of the House of Representatives.

[FR Doc. 2019–17205 Filed 8–14–19; 8:45 am]

BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

10 CFR Part 1003

[DOE–OHA–2019–0024]

RIN 1903–AA10

Revisions to the Office of Hearings and Appeals Procedural Regulations

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Hearings and Appeals Procedural Regulations set forth the default procedures for appearance and practice before the Office of Hearings and Appeals (OHA), the quasi-judicial branch of the Department of Energy (DOE). The procedures set forth in this regulation apply to all proceedings before OHA

where a comprehensive procedural scheme is not found in another DOE regulation. The OHA proposes to simplify and modernize its procedures.

DATES: Comments are due by September 16, 2019.

ADDRESSES: Inquiries should be sent to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0107, (202) 287–1550, Email: *kristin.martin@hq.doe.gov.* Comments must identify the Notice of Proposed Rulemaking for the Office of Hearings and Appeals Procedural Regulations. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov/docket?D=DOE-OHA-2019-0024.* Follow the instructions for submitting comments.

2. *Email: Kristin.Martin@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin L. Martin, Attorney-Advisor, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0107, (202) 287–1550, Email: *kristin.martin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulatory History

Part 1003 was promulgated in 1995 to replace 10 CFR part 205, a procedural regulation designed to apply to matters involving the former oil price and allocation control regulations effective during the 1970s. As the oil price and allocation control program wound down, the OHA's jurisdiction expanded to include other programs. Part 1003 was intended to apply to most proceedings before the OHA that did not involve the former federal petroleum price and allocation control regulations. Namely, part 1003 contained a number of subparts that set forth procedures specific to the following types of proceedings: Requests for exceptions or exemptions from DOE rules, appeals of DOE orders, applications for stays, applications for modification or revision of DOE orders, requests for OHA conferences and hearings, and requests for special redress relief or other extraordinary assistance.

Since 1995, the OHA's jurisdictional portfolio has changed significantly, shifting away from petroleum product refund proceedings to include primarily personnel security hearings, Freedom of Information Act appeals, and proceedings under the DOE's Contractor Employee Whistleblower Protection Program. Most of the proceedings that OHA oversees currently are governed by their own procedural regulations and are not subject to the procedures found in part 1003. As the nature of the OHA's work has evolved and technology has improved, the procedures set forth in part 1003 have become more cumbersome and less effective. Part 1003 proceedings involve fewer parties, few to no hearings, and fewer stakeholders than other types of OHA proceedings. In addition, Part 1003 mandates outdated methods of communication that are far less efficient than modern methods. Accordingly, the OHA has decided to propose revisions to part 1003 as described in Section II.

II. Summary of Proposed Revisions

The OHA is proposing a number of updates to part 1003. Specifically, the OHA seeks to eliminate the subparts specific to individual types of proceedings and to consolidate those procedures in a single part with general applicability. The new consolidated procedures would govern all proceedings before OHA where a comprehensive procedural scheme is not found in another DOE regulation, including appeals of DOE orders, requests for exceptions or exemptions from DOE rules, and requests for modification or rescission of DOE orders. This proposal is intended to simplify and streamline the procedures for appearing before the OHA, and to reduce cost and administrative burdens for parties.

A. Methods of Communication and Disclosure

In executing its duties under the revised part 1003, the OHA intends to make use of the *regulations.gov* federal portal. Currently, except in unusual circumstances, all documents submitted in exception relief proceedings are posted to an e-docket on that website and are available for public comment through the website as well. The OHA would expand this practice to all proceedings conducted under part 1003. In addition, OHA proposes to eliminate requirements that communications and disclosures under part 1003 be transmitted by any one particular method, allowing for greater flexibility as technology changes. For instance, the proposed revisions do not mandate a particular method by which service must be carried out, and the OHA may allow service by a method other than those specified in the regulation.

B. § 1003.1 Purpose and Scope

1. *Applicability to Other Regulations.* The OHA proposes to clarify that part 1003's procedures are not applicable to proceedings that are subject to specific and comprehensive procedural schemes found in other parts of DOE's regulations. Examples of regulations with comprehensive adjudicative procedures include 10 CFR parts 708, 710, 712, and 1004.

2. *Elimination of Subparts.* The OHA proposes to consolidate subparts B through G of the current part 1003 into a single part. Each of subparts B through G in the current part 1003 sets forth procedures for a different type of proceeding, such as stay proceedings, appeal proceedings, and exception relief proceedings. Many of the procedures contained in these subparts—such as the procedures for filing a petition and providing notice to interested persons—are duplicative. The primary area where the subparts differ is in their descriptions of the legal standards applicable to each type of proceeding. Thus, the OHA believes that consolidation of the subparts—while still differentiating the legal standards specific to each type of proceeding—would simplify litigation before the OHA and make part 1003 more accessible to *pro se* parties.

Multiple parts of DOE's regulations make reference to subparts B through G as they appear in the current part 1003. With the proposed consolidation of the subparts, rather than attempt to identify and amend each and every reference throughout all of DOE's regulations, the OHA proposes to add § 1003.1(b), which clarifies that all such references shall be considered to refer to part 1003 generally, rather than to a specific subpart. For example, DOE's Energy Conservation Program for Consumer Products, at 10 CFR part 430, states, ''To exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR part 1003, subpart C.'' 10 CFR 430.27(m). Under the proposed part 1003, subpart C would not exist, but in accordance with proposed § 1003.1(b), the general procedures contained in part 1003 would still apply to the appeals process required by § 430.27(m).

C. § 1003.2 Definitions

1. The OHA proposes to add a definition of ''Alternative Dispute Resolution'' (ADR). The OHA is proposing to add a provision to the regulation encouraging ADR and an explicit definition is necessary for clarity.

2. As part of its effort to consolidate the multiple iterations of procedures contained in the current part 1003 into a single procedure, the OHA proposes to use the term ''petition'' to refer to all initial filings in all proceedings governed by part 1003. A petition could

be an appeal, an application for exception, or another type of filing that initiates a proceeding before OHA. Use of the single term ''petition'' is intended to increase the clarity and accessibility of part 1003. Similarly, any person who files an initial submission with the OHA would be called a ''petitioner'' for purposes of the regulation. However, in practice, the person could still be referred to as an appellant, applicant, or other appropriate designation.

3. The OHA proposes to define ''verified email address,'' a new term created to assist with electronic notice and filing.

4. The OHA proposes to define the terms ''action,'' ''Decision and Order,'' ''final disposition of DOE,'' ''party,'' and ''participant.'' Defining these terms will allow for greater precision and specificity in language and will reduce ambiguity in the regulation.

D. § 1003.6 Service

The OHA proposes to allow for methods of service other than the U.S. Mail. Specifically, the OHA proposes to allow service via email. This would increase efficiency and reduce costs for parties. The OHA also proposes to allow for service via unspecified alternative methods, allowing for flexibility as communications technology evolves. For example, a petitioner could request that the OHA allow him to send a link to the e-docket on the *regulations.gov* federal portal in lieu of sending copies of the documents.

E. § 1003.9 Method of Submission of Petitions, Documents, and Other Materials

The OHA proposes to mandate that all documents filed with the OHA be filed electronically, except when permission is granted to file in another manner. Electronic filing is faster, more reliable, and more cost-efficient than paper filing. It also coordinates with DOE electronic records retention methods. However, not everyone can file electronically, and some materials are better mailed or faxed for logistical reasons. Accordingly, any person wishing to file via non-electronic means could contact the OHA and request permission to do so. The OHA would consider granting such requests in circumstances where good cause has been shown why the document cannot or should not be filed electronically.

F. § 1003.11 Filing a Petition

The consolidated procedures proposed by the OHA would be initiated by the filing of a petition by a person who believes he has been adversely affected by a DOE decision or action, or who is otherwise authorized by law.

1. *Form and Elements of a Petition.* The proposed revisions contain requirements for the form and elements of a petition. While the proposed form is substantially similar to the form of like filings under the current regulation, the proposed elements are more specific and comprehensive and are intended to reduce the need for information requests from the OHA. Under the current regulation, the required contents of a filing are often insufficient for the OHA to determine the relief sought, the circumstances the filer believes warrant relief, and the factual and legal justifications for relief. By requiring such information in the initial filing, the proposed regulation would ensure that petitions give the OHA a clearer picture of what the petitioner is seeking and why, thereby streamlining the initial phases of the proceeding. The OHA believes that this change has the potential to reduce its time to decision by weeks or, in some cases, months.

2. *Motions for Stay.* The OHA also proposes to require that motions for a stay be filed at the same time as petitions. A stay is a type of order that has the effect of pausing a legal process, such as a proceeding or order. Unlike under the current part 1003, where the procedure for requesting a stay is set forth in its own subpart, subpart D, the consolidated procedures the OHA proposes in this proposed rulemaking do not apply to requests for stays. Under the proposed part 1003, the OHA would issue stays as interlocutory orders, rather than as Decisions and Orders. This treatment mirrors that of the federal courts and is logical in the sense that a stay is nearly always incidental to a substantive proceeding. The legal standard for consideration of stay requests is outlined in previous OHA decisions, which have precedential authority. Motions and interlocutory orders would be posted to the e-docket, allowing the public an opportunity to comment.

The requirement that a motion for a stay be filed concurrently with a petition would serve to streamline proceedings by giving early notice to the OHA, DOE as a whole, and potentially aggrieved or interested parties that a stay is being sought. However, if a petitioner can show good cause as to why it should be able to file a motion for stay later, the proposed revisions would allow the OHA the flexibility to fairly address the situation.

G. § 1003.12 Notice

The OHA proposes to allow notice via electronic or other means. Part 1003 was created before electronic communication was common and, as email became ubiquitous over time, the specific requirement that notice be served through the U.S. Mail has created unnecessary burdens, both administrative and financial, for litigants. The proposed revisions would allow for greater flexibility in notice requirements so that litigants would not be forced to use a single method of communication after it becomes outdated. Additionally, the proposed revisions would allow the OHA to require additional or alternative notice if the standard provisions prove ineffective or overly burdensome.

H. § 1003.13 Alternative Dispute Resolution

The OHA proposes to add a section encouraging the use of Alternative Dispute Resolution. This reflects DOE's policy toward dispute resolution, while underscoring the benefits of the process.

I. § 1003.14 Evaluation of Petitions

1. *Timing.* The OHA proposes to impose time limits, mandatory communication with litigants, and procedural guidelines on its evaluation of petitions. These changes are designed to provide litigants with increased guidance and certainty regarding when they will receive a decision and how that decision will be reached.

2. *Conduct of the Proceedings.* The OHA proposes to specify that the OHA Director has the judicial powers necessary to conduct proceedings, including, but not limited to, granting or denying motions and entering interlocutory orders. This provision would allow the OHA Director to exercise the full range of judicial powers—even those not specified in the regulation—that are necessary to ensure a fair and full evaluation of the petition. For example, while discovery is not typically a part of part 1003 proceedings, it may be ordered by the OHA Director in certain cases where appropriate.

3. *Hearings.* The majority of proceedings brought under Part 1003 in the last several years have not required a hearing. Through use of the *regulations.gov* rulemaking portal, interested parties can comment on proceedings at length without having to travel to a hearing to put their concerns on the record. Accordingly, the OHA proposes to eliminate the subpart on hearings—current subpart F—and insert a new section outlining the criteria used to determine whether a hearing should be conducted. Nothing in this proposed regulation prohibits a party from requesting a hearing.

J. § 1003.15 Subpoenas, Information Requests, Oaths, Witnesses

1. The OHA proposes to change the term ''Special Report Order'' to ''information request,'' which the OHA considers a more accurate description of the tool used by the OHA to elicit information related to a proceeding.

2. The OHA proposes to add standards for oaths or affirmations. The oath or affirmation must now refer the witness to federal statutes describing penalties for perjury and falsification.

The OHA understands 18 U.S.C. 1001 and 18 U.S.C. 1621 to apply to all statements and submissions to the OHA, whether oral or written. Therefore, the OHA proposes to remove duplicative references to these statutes from the regulation.

K. § 1003.16 Dismissal of Petitions

The OHA proposes to expand upon and codify the circumstances under which it may dismiss petitions. The proposed revisions separate dismissals into two categories: Dismissal with prejudice and dismissal without prejudice. A dismissal is considered a Decision and Order.

Dismissal with prejudice ends a proceeding and precludes the petitioner from bringing the same petition again. This is appropriate when circumstances argue that further legal proceedings would be inappropriate or duplicative. The proposed reasons for dismissal with prejudice relate primarily to justiciability issues (such as mootness) and substantial, willful noncompliance with procedures (such as provision of false statements under oath or refusal to comply with an OHA order).

Dismissal without prejudice ends a proceeding without precluding the petitioner from filing another petition with regard to the same subject matter. The proposed reasons for dismissal without prejudice relate primarily to technical and procedural errors by the petitioner—such as failure to include a required element of the petition or failure to timely provide information at the OHA's request. The proposed reasons for dismissal without prejudice also include the petitioner's failure to state a claim upon which the OHA can grant relief. This is analogous to dismissal under Federal Rule of Civil Procedure 12(b)(6), and the OHA applies the same legal standard used by federal courts to determine whether a petitioner has failed to state a claim upon which relief can be granted. Finally, the proposed reasons for dismissal without prejudice also include circumstances in which the OHA does not have enough information to make a decision. Dismissal under these circumstances allows the OHA to avoid making an uninformed decision.

L. § 1003.17 Standard of Review

The OHA proposes a default standard of review for petitions not otherwise governed by an authority that prescribes a standard of review. The proposed standard is similar to the standard set forth in the current § 1003.36(c). A petitioner that seeks relief from an action of the DOE must show that the DOE acted arbitrarily, capriciously, or in violation of law, rule, regulation, or delegation. Under this standard, the OHA would pay deference to the subject matter expertise of the DOE component whose action is under review, while at the same time ensuring that such component acted legally and with appropriate consideration.

The OHA's standard of review for petitions filed under the authority of 42 U.S.C. 7194 will continue to include a consideration of whether the petitioner has made a showing of serious hardship, gross inequity or unfair distribution of burdens.

M. § 1003.18 Decision and Order

The OHA proposes to require that a decision granting or denying the relief sought by a petitioner be presented in a particular format, referred to as a Decision and Order. The Decision and Order would include the legal and factual basis for the decision, state whether it is the DOE's final agency action on the matter, and state what review is available to the parties.

The OHA proposes that there be no administrative appeal of a Decision and Order, except as provided by federal statute. This proposal stems from logistical necessity. Decisions under part 1003 are issued by the OHA Director. There is no higher authority in the OHA to which a person could appeal. Furthermore, as the OHA's jurisdiction under part 1003 is almost entirely delegated from the Secretary of Energy, there is no other entity within the DOE with authority to make decisions or hear appeals on such matters.

N. § 1003.19 Reconsideration

The OHA proposes to allow for reconsideration of a Decision and Order if the motion to do so is filed by the 20th day after the Decision and Order is made available to the public. The Director would grant a motion for reconsideration only if he determines that the Decision and Order contains an error that materially influenced the proceeding's outcome.

III. Public Comment Procedures

Interested persons are invited to participate in this rulemaking proceeding by submitting data, views, or arguments. Written comments should be submitted to the address, and in the form, indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To assist in DOE's review of the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information requested to be exempt by law from public disclosure has been redacted. DOE is responsible for the final determination regarding disclosure or nondisclosure of the information, and for treating information appropriately under the Freedom of Information Act and DOE implementing regulations at 10 CFR part 1004.

IV. Regulatory Review

A. Executive Order 12866

It was determined that this action is not a significant regulatory action subject to review under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993) by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. 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 that 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.

Pursuant to OMB's *Guidance Implementing Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs* (April 5, 2017), this action does not constitute an ''E.O. 13771 regulatory action'' because it does not meet the E.O. 12866 definition of a significant regulatory action. DOE determined, however, that this action furthers the policy goals outlined in Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' which encourages the repeal, replacement, or modification of existing regulations that, among other things, are outdated, unnecessary, or ineffective. Prior to this action, Part 1003 was outdated, repetitive, and, in some sections, inefficient. Certain provisions, particularly the requirement that notice be served via U.S. Mail, had become onerous for regulated parties. This action clarifies the regulation's language, streamlines the proceedings, and removes burdensome requirements. This should result in increased time and resource savings for litigants and DOE.

C. 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). DOE has made its procedures and policies available on the Office of General Counsel's website: *http://www.gc.doe.gov.*

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule would simplify procedural rules primarily for litigants and reduce the financial and administrative burdens involved in bringing cases before the OHA. DOE has determined that the proposed rule, if adopted, would not result in a significant economic impact on a substantial number of small entities because the revisions are specifically designed to ease and reduce the obligations of litigants. For example, allowing service via email and other electronic methods significantly reduces the time and expense of bringing a 1003 proceeding for petitioners, most of whom are corporations and small businesses. Moving the public reference room from a physical location in Washington, DC, to an online location makes research far easier for litigants outside the Capital region. In making changes such as the ones mentioned here and described elsewhere in the preamble, the OHA has not added new burdens on participants in part 1003 proceedings, resulting in a net decrease in burdens.

DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. The Paperwork Reduction Act of 1995

The proposed changes to part 1003 do not contain information collection requirements subject to review and approval by OMB under the Paperwork Reduction Act.

E. The Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 U.S.C. 1534.

The proposed rule would 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. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. 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 proposed rule that may affect family well-being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, the DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

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 (Feb. 7, 1996), imposes on Executive 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. With regard to the review required by section 3(a), 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 whether it is unreasonable to meet one or more of them. The DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

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 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). The 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.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 1003

Administrative practice and procedure, Appeal procedures, Hearing and appeal procedures.

Signed in Washington, DC, on August 6, 2019.

Poli A. Marmolejos,

Director, Office of Hearings and Appeals.

For the reasons set out in the preamble, the DOE proposes to amend part 1003 of title 10, Code of Federal Regulations, to read as follows:

PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

■ 1. The authority citation for Part 1003 continues to read as follows:

Authority: 15 U.S.C. 761 *et seq.;* 42 U.S.C. 7101 *et seq.*

■ 2. Revise subpart A to read as follows:

SUBPART A—GENERAL PROVISIONS

Sec.

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1003.2 Definitions.
1003.3 Appearance before the OHA.
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1003.16 Dismissal of petitions.
1003.17 Standard of review.
1003.18 Decision and Order.
1003.19 Reconsideration.

§ 1003.1 Purpose and scope.

(a) This part establishes the procedures to be utilized in certain proceedings before the Office of Hearings and Appeals of the Department of Energy, where comprehensive procedures are not to be found in another part of DOE's regulations. These procedures provide standard rules of practice in a variety of informal adjudications when jurisdiction is vested in the Office of Hearings and Appeals, including requests for adjustments from DOE rules, regulations, and orders under the authority of 42 U.S.C. 7194 as well as other requests for relief with respect to final dispositions of DOE. Any or all of the procedures contained in this part may be adopted by reference in another DOE program, statute, rule, regulation, guidance, or DOE delegation of authority that invokes the adjudicatory authority of the Office of Hearings and Appeals. These rules do not apply to proceedings governed by a federal statute or DOE regulation that contains comprehensive procedures specifically applicable to proceedings conducted under the authority of that regulation. (*E.g.,* 10 CFR part 708–DOE Contractor Employee Protection Program; 10 CFR part 710—Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material; 10 CFR part 1004—Freedom of Information Act (FOIA); 10 CFR part 712—Human Reliability Program.)

(b) Wherever another DOE program, statute, rule, regulation, guidance, or DOE delegation of authority references or adopts by reference the procedures set forth in a subpart contained in a previous iteration of this part, regardless of the subpart referenced, the procedures set forth in this part shall be deemed to apply.

§ 1003.2 Definitions.

(a) As used in this part:

Action means an affirmative act by DOE that carries the force of law.

Aggrieved, with respect to a person, means adversely affected by an action of the DOE.

Alternative Dispute Resolution means any technique for resolving disputes and managing conflict without resorting to litigation in either an administrative or judicial forum. Alternative Dispute Resolution techniques include, but are not limited to, mediation, facilitation, and shuttle diplomacy.

Decision and Order means the OHA's final decision on a petition brought under this part.

Director means the Director of the Office of Hearings and Appeals or duly authorized delegate.

DOE means the Department of Energy, created by the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), and the National Nuclear Security Administration (NNSA).

Duly authorized representative means a person who has been designated to appear before the Office of Hearings and Appeals in connection with a proceeding on behalf of a person interested in or aggrieved by an action of the DOE. Such appearance may consist of the submission of a written document, a personal appearance, verbal communication, or any other participation in the proceeding.

Federal legal holiday means any calendar day designated as a federal holiday by federal statute or Executive order.

Final disposition of DOE means a DOE rule, order, or other action in any matter other than:

(1) A rulemaking;

(2) An internal DOE order or directive issued by the Secretary of Energy or his delegate in the management and administration of departmental elements and functions; or

(3) Any decision or order issued under 41 U.S.C. 4712 or under part 708, part 710, part 712, or part 1004 of this title.

OHA means the Office of Hearings and Appeals of the Department of Energy.

Participant means a non-party entity that submits a comment, briefing, or other filing in a proceeding.

Party means the petitioner and any adverse entity, which may include the DOE, which assumes the role of defendant or respondent in the proceeding.

Person means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof.

Petition means a written submission to the OHA requesting that the OHA grant the petitioner relief.

Petitioner means any person filing a petition with the OHA.

Proceeding means the process and activity, and any part thereof, instituted by the OHA—either on its own initiative or in response to a petition submitted by a person—that may lead to an action by the OHA.

Verified email address means an email address that is publicly published or available upon request, or, if no such address exists, an email address through which the sender has communicated with the recipient in the previous 12 months.

(b) Throughout this part the use of a word or term in the singular includes the plural, and the use of the male pronoun is gender neutral.

§ 1003.3 Appearance before the OHA.

(a) An interested person may make an appearance, including a personal appearance at the discretion of the OHA, and participate in any proceeding described in this part on his own behalf or by a duly authorized representative. Any document filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative.

(b) *Suspension and disqualification.* The OHA may deny, temporarily or permanently, in whole or in part, the privilege of participating in proceedings, including oral presentation, to any individual who is found by the OHA—

(1) To have made false or misleading statements, either orally or in writing;

(2) To have filed false or materially altered documents, affidavits or other writings;

(3) To lack the specific authority to represent the party or participant; or

(4) To have engaged in or to be engaged in conduct that substantially disrupts a proceeding.

§ 1003.4 Computation of time.

(a) *Days.* Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the OHA, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal legal holiday, in which event the period runs until the end of the following day that is not a Saturday, Sunday, or a federal legal holiday. Documents received after 5:00 p.m., Eastern Time, are deemed filed on the following regular business day.

(b) *Hours.* If the period of time prescribed in an order issued by the OHA is stated in hours rather than days, the period of time begins to run upon actual notice of such order, whether by oral or written communication, to the person directly affected, and will run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended, or rescinded. When a written order is transmitted by oral communication, the written order must be served as soon thereafter as is feasible.

(c) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time after issuance to such person of an order, notice or other document and the order, notice, or other document is served solely by mail, 3 days will be added to the prescribed period.

§ 1003.5 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the OHA upon good cause shown.

§ 1003.6 Service.

(a) All documents required to be served under this part must be served personally, by first class United States mail, or by verified email address, except as otherwise provided.

(b) Service upon a person's duly authorized representative constitutes service upon that person.

(c) Official United States Postal Service receipts from certified mailing and email delivery receipts constitute evidence of service.

(d) The OHA may, at its discretion, allow for alternate forms of service when it determines that such would be advisable.

§ 1003.7 General filing requirements.

(a) *Purpose and scope.* The provisions of this section apply to all documents required or permitted to be filed with the OHA.

(b) *Signing.* Any document that is required to be signed, must be signed by the person filing the document. Any document filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative. The signature by the filer constitutes a certificate by the signer that the signer has read the document and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact, warranted under existing law, and submitted in good faith and not for any improper purpose such as to harass or to cause unnecessary delay. If a document is signed in violation of this section, the OHA may impose the sanctions specified in § 1003.3 and other sanctions determined to be appropriate.

(c) *Labeling.* A petition must be clearly labeled according to the nature of the action involved both on the petition itself and, where applicable, in the subject line of the email in which the petition is transmitted.

(d) *Obligation to supply information.* A person who files a petition is under a continuing obligation during the proceeding to provide the OHA with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other submission that is subsequently filed by that person with any DOE office.

(e) *The same or related matters.* A person who files a petition with the OHA must state whether, to the best knowledge of that person, the same or

related action as that which is the subject of the petition has been or presently is being considered or investigated by any other DOE office, other federal agency, department, or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with any proceeding described in this part. In addition, the person must state whether contact has been made by the person or one acting on his behalf with any person who is employed by the DOE with regard to the same or a related issue, act, or transaction arising out of the same factual situation; the name of the person contacted; whether the contact was oral or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Request for confidential treatment.* (1) If any person filing a document with the OHA claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if such person requests the OHA not to disclose such information, such person must file together with the document a copy of the document from which the information for which confidential treatment is being sought has been deleted. The person must indicate in the original document that it is confidential or contains confidential information and must file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. For example, if the person states that the information comes within the exception codified at 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit a copy of the document with the confidential information deleted, the OHA may assume that there is no objection to public disclosure of the document in its entirety.

(2) The OHA will make a determination regarding any claim of confidentiality under criteria specified in 10 CFR 1004.11. Notice of the decision by the OHA to deny such claim, in whole or in part, and an opportunity to respond will be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

(g) Each petition to the OHA must be submitted as a separate document, even if the petitions deal with the same or a related action or are submitted in connection with the same proceeding.

§ 1003.8 Effective date of orders.

Any order issued under this part is effective as against all persons having actual or constructive notice thereof upon issuance, in accordance with its terms, unless and until it is stayed or suspended. An order is deemed to be issued on the date, as specified in the order, on which it is signed by the Director, unless the order provides otherwise.

§ 1003.9 Method of submission of petitions, documents, and other materials.

Absent exceptional circumstances, all submissions to the OHA, as provided in this part or otherwise, must be filed electronically in accordance with the instructions set forth on the OHA website, found at *https://www.energy.gov/oha/filing-information.* The OHA may grant permission to file via mail or facsimile. Any submissions made in hard copy will not be returned.

§ 1003.10 Public reference room.

The OHA maintains an electronic public reference room at *https://www.energy.gov/oha/decision-summaries.* The following information is included:

(a) A list of all persons who have filed a petition and a digest of each petition;

(b) Each Decision and Order, with confidential information deleted, issued in response to a petition; and

(c) Any other information in the possession of the OHA which is required by statute to be made available for public inspection and copying, and any other information that the OHA determines should be made available to the public.

§ 1003.11 Filing a petition.

(a) *Who May File.* Any person may file a petition under this part who is aggrieved by a final disposition of DOE or who is so authorized by a program, statute, rule, regulation, guidance, or DOE delegation of authority.

(b) *Form of Petition.* The person seeking relief under this part must file a petition. The general filing requirements in § 1003.7 apply in addition to the requirements stated in this part.

(c) *Elements of a Petition.* Petitions to the OHA must include, as applicable:

(1) A full and complete statement of all relief requested from the OHA;

(2) A citation to the statute, regulation, delegation, or other authority pursuant to which the OHA has jurisdiction to consider the petition;

(3) A full and complete statement of all relevant facts pertaining to the action that is the subject of the petition and to the OHA relief sought;

(4) A statement of the factual and legal justification for the relief requested in the petition;

(5) A copy of all documents, including, but not limited to, contracts, financial records, communications, plans, analyses, and diagrams related to the petitioner's eligibility for the relief requested in the petition; and,

(6) A motion for stay, if a stay is sought by the petitioner. The OHA may grant a motion for stay filed after the petition only upon a showing of good cause.

(d) *Service Certification.* The petitioner must submit to the OHA a certification that the petitioner has served the notice required pursuant to § 1003.12 of this part. The OHA must receive the certification within 15 days of the date on which OHA received the petition. The OHA may grant an extension of time only upon a showing of good cause. The certification must include the names, addresses, telephone numbers, and email addresses of all potentially aggrieved persons or a statement that such information, in whole or in part, is not reasonably ascertainable.

(e) *Where to File.* A petition must be filed with the OHA in the manner specified in § 1003.9.

§ 1003.12 Notice.

(a) The petitioner must serve a copy of the petition and any subsequent amendments or other documents relating to the petition, or a copy from which confidential information has been deleted in accordance with § 1003.7(f), to each person who is reasonably ascertainable by the petitioner as a person who would be aggrieved by the OHA relief sought. The copy of the petition must be accompanied by a statement that the person may submit comments regarding the petition to the OHA within 10 days. The OHA may, in its discretion, extend the comment period. The petitioner must file a service certification with the OHA, in accordance with § 1003.11(d), stating that the requirements of this paragraph have been complied with and must include the names, addresses, and verified email addresses of each person to whom a copy of the petition was sent. The OHA may require the petitioner to provide additional or alternative notice, may identify additional persons on whom an applicant must serve notice,

or may determine that notice should be published in the **Federal Register**.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the petitioner determines that compliance with paragraph (a) of this section would be impracticable, the petitioner must:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the certification a description of the persons or class or classes of persons to whom notice was not sent, as well as a brief explanation of why notice to each person or class of person was impracticable.

(c) Any person submitting written comments to the OHA regarding a petition filed under this part must serve a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.7(f), to the petitioner. The person must certify to the OHA that he has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.13 Alternative Dispute Resolution.

The DOE encourages the use of Alternative Dispute Resolution (ADR) to resolve disputes and controversies at any stage of the proceedings. Accordingly, parties appearing before the OHA are encouraged to use ADR when practical. The DOE Alternative Dispute Resolution Office, which employs multiple neutrals trained in mediation and other ADR services, provides ADR services for disputes involving the DOE and its affiliated organizations (*e.g.,* DOE contractors). ADR is voluntary and the OHA will never require parties to engage in settlement negotiations or mediation.

§ 1003.14 Evaluation of petitions.

(a) The OHA will acknowledge receipt of all petitions filed pursuant to this part.

(b) The OHA may request information of a petitioner, including, but not limited to, financial documents, responses to interrogatories, copies of communications, and such other information the OHA determines may inform its evaluation of the petition.

(1) The OHA will provide a petitioner with a period of time within which to provide any information requested by the OHA pursuant to this paragraph and instructions on how to deliver the information to the OHA.

(2) The OHA may extend the period of time for a petitioner to provide information requested by the OHA upon a showing of good cause by the petitioner. Such extensions will generally be for a period of no more than 30 days, and in no case will the OHA grant an extension that would result in the undue delay of its evaluation of a petition.

(c) In evaluating a petition, the OHA may consider relevant information from any source, including information received from a third party, provided that the petitioner is afforded an opportunity to respond to all third-party submissions.

(d) The OHA will complete its evaluation of a petition within 180 days of receipt of the petition. However, the Director may extend the period for the OHA's review for good cause, the reasoning for which must be set forth in the order extending the review period.

(e) In its evaluations, the OHA will use as a guide, but will not be bound by, the Federal Rules of Civil Procedure and Federal Rules of Evidence.

(f) The Director has all of the judicial powers necessary to conduct the proceeding, including, but not limited to, grants or denials of motions and entry of interlocutory orders.

(g) *Hearings.* The OHA may conduct a hearing with regard to the petition if, in its discretion, it considers that such hearing will materially advance the proceeding. In deciding whether to conduct a hearing, the OHA may consider various factors, including, but not limited to, the number of persons potentially aggrieved by a petition, the extent to which witness testimony will assist OHA in developing a complete factual record, and the estimated costs of conducting a hearing at a venue reasonably convenient to all parties.

§ 1003.15 Subpoenas, information requests, oaths, witnesses.

(a) In accordance with the provisions of this section and as otherwise authorized by law, the Director may sign, issue, and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; and subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in the possession of the subpoenaed person.

(b) The OHA may issue an information request requiring any person subject to the jurisdiction of the OHA to file a report providing information relating to the OHA proceeding, including, but not limited to, written answers to specific questions. The information request may be in addition to any other reports required.

(c) The Director, for good cause shown, may extend the time prescribed for compliance with the subpoena or information request and determine the terms of satisfactory compliance.

(d) Prior to the time specified for compliance, but within 10 days after the date of service of the subpoena or information request, the person upon whom the document was served may file a request for review of the subpoena or information request with the Director. The Director then will provide notice of receipt to the person requesting review, may extend the time prescribed for compliance with the subpoena or information request, and may determine the terms of satisfactory compliance.

(e) If the subpoena or information request is not modified or rescinded within 10 days of the date of the Director's notice of receipt:

(1) The subpoena or information request will be effective as issued; and

(2) The person upon whom the document was served must comply with the subpoena or information request within 20 days of the date of the Director's notice of receipt, unless otherwise notified in writing by the Director.

(f) A subpoena or information request must be served upon a person named in the document.

(g) If any person upon whom a subpoena or information request is served pursuant to this section refuses or fails to comply with any provision of the subpoena or information request, a proceeding may be commenced in the appropriate United States District Court to enforce the subpoena or information request.

(h) Documents produced in response to a subpoena must be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that:

(1) A diligent search has been made for each document responsive to the subpoena; and

(2) To the best of his knowledge, information, and belief each document responsive to the subpoena is being produced.

(i) Any information furnished in response to an information request must be accompanied by the sworn certification, under penalty of perjury, of the person to whom it was directed or his authorized agent who actually provides the information that:

(1) A diligent effort has been made to provide all information required by the information request; and

(2) All information furnished is true, complete, and correct.

(j) If any document responsive to a subpoena is not produced or any information required by an information request is not furnished, the certification must include a statement setting forth every reason for failing to comply with the subpoena or information request. If a person to whom a subpoena or information request is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraphs (h) or (i) of this section must also submit a written list of the documents or the information withheld indicating a description of each document or piece of information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, and an identification of the person whose privilege is being asserted.

(k) If testimony is taken pursuant to a subpoena, the Director will determine whether the testimony will be recorded and the means by which the testimony is recorded.

(l) A witness whose testimony is recorded may procure a copy of his testimony by making a written request for a copy and paying the appropriate fees.

(m) The Director may sequester any person subpoenaed to furnish documents or give testimony. Unless permitted by the Director, neither a witness nor his attorney is permitted to be present during the examination of any other witnesses.

(n) The Director may require testimony to be given under oath, regardless of the form of the testimony. The oath or affirmation will direct the witness's attention to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(o) The Director may require submissions to the OHA to be accompanied by an oath or affirmation attesting to the truth and accuracy of the submission. The oath or affirmation will direct the submitter's attention to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(p) A witness whose testimony is taken may be accompanied, represented and advised by his attorney as follows:

(1) Upon the initiative of the attorney or witness, the attorney may advise his client, in confidence, with respect to the question asked his client, and if the witness refuses to answer any question, the witness or his attorney is required to briefly state the legal grounds for such refusal; and

(2) If the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(q) The Director will take all necessary steps to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or language. The OHA may take steps as the circumstances warrant in regard to any instances where any person or attorney refuses to comply with directions or provisions of this section.

§ 1003.16 Dismissal of petitions.

The Director may issue a Decision and Order dismissing a petition at any time during the course of a proceeding. The Decision and Order shall state whether the dismissal is with prejudice or without prejudice. A Decision and order Dismissing a petition may be the subject of a motion for reconsideration in accordance with § 1003.19 of this part.

(a) *Dismissal with Prejudice.* The dismissal of a petition with prejudice by the OHA terminates the OHA's review of the petition and bars the petitioner from submitting any future petition concerning the same, or substantially the same, issues as those in the petition. The OHA may dismiss a petition with prejudice if:

(1) The OHA lacks jurisdiction to consider the petition;

(2) The petitioner has already received a Decision and Order from the Director in response to a previously filed petition that addresses the same issue;

(3) The petitioner provides a false statement under oath or files a false instrument with the OHA, as determined by the OHA;

(4) The petitioner refuses to comply with an order issued by the OHA;

(5) The petition is untimely;

(6) The issues raised in the petition are moot;

(7) The petitioner repeatedly fails to comply with procedural requirements; or,

(8) The same or a substantially similar petition was previously dismissed by the OHA without prejudice, and the same basis for dismissal without prejudice exists upon refiling by the same petitioner.

(b) *Dismissal without Prejudice.* The dismissal of a petition without prejudice by the OHA terminates the OHA's review of the petition but does not bar the petitioner from resubmitting the petition provided that the facts or circumstances leading to the dismissal have been resolved. In dismissing a petition without prejudice, the OHA may order that the petitioner may not resubmit the petition, or a substantially similar petition, for a period of time not to exceed 180 days. The OHA may dismiss a petition without prejudice if:

(1) The petitioner fails to include any of the required elements of a petition set forth in § 1003.11 of this part;

(2) The petitioner fails to provide notice as required by § 1003.12 of this part;

(3) The petitioner fails to timely provide documents or information at the request of the OHA pursuant to § 1003.14 or § 1003.15 of this part;

(4) The petition fails to state a claim upon which the OHA can grant relief; or

(5) The OHA determines that there is insufficient information upon which to base a decision.

§ 1003.17 Standard of review.

(a) The OHA will grant a petition that seeks an adjustment from a DOE rule, regulation or order under the authority of 42 U.S.C. 7194 only if it determines that doing so will alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens.

(b) Except as provided by program, statute, rule, regulation, or DOE delegation of authority, the OHA will grant any other petition filed under this part upon a showing that the DOE acted arbitrarily, capriciously, or in violation of a law, rule, regulation, or delegation with respect to the final disposition of DOE that is the subject of the petition.

(c) Petitions shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous petitions of the same kind.

§ 1003.18 Decision and Order.

(a) Upon consideration of the petition and other relevant information received or obtained during the proceeding, the OHA will issue a Decision and Order granting or denying the petition and ordering relief as appropriate. The OHA will serve the Decision and Order on the parties to the proceeding and make it available to the public.

(b) The Decision and Order will set forth its legal basis and the relevant facts, state whether it is a final agency action of the DOE, and state what further review, if any, is available.

(c) There is no administrative appeal of a Decision and Order, except as provided by federal statute.

§ 1003.19 Reconsideration.

A participant in the proceeding may submit to the OHA a motion for

reconsideration of a Decision and Order. The motion for reconsideration must be filed by the 20th day after the OHA makes the Decision and Order available to the public. The motion must include a statement of the grounds on which the movant believes reconsideration is warranted. Such grounds may include, but are not limited to, procedural, legal, or factual errors in the Decision and Order. A motion for reconsideration may be granted if the Director determines the Decision and Order contains an error that materially impacted the outcome of the proceeding.

[FR Doc. 2019–17207 Filed 8–14–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0557; Product Identifier 2019–NE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Aviointeriors S.p.A. Centaurus Passenger Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Aviointeriors S.p.A. (Aviointeriors) Centaurus passenger seats with a specific life vest pouch assembly installed. This proposed AD was prompted by reports of life vest pouches that were installed incorrectly on certain seats. This proposed AD would require inspection of the life vest pouch assembly and, depending on the results of the inspection, replacement of the life vest pouch assembly. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 30, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202 493 2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12 140, 1200 New Jersey Avenue SE, Washington, DC, 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Aviointeriors S.p.A., Customer Support, Via Appia Km. 66,4; 04013 Latina, Italy; phone: +39 0773 6891; fax: +39 0773 631546; email: *customer-support@aviointeriors.it;* internet: *http://www.aviointeriors.it.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0557; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0557; Product Identifier 2019–NE–17–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0264R1, dated April 4, 2019 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Incorrect installation of the affected pouch was found on certain affected seats. Subsequent investigation determined that those pouches have been (re)installed in service. This condition, if not detected and corrected, could prevent extraction of the life vest from the pouch, leading to evacuation of the aeroplane without a life vest, possibly resulting in injury to passengers.
>
> To address this potential unsafe condition, Aviointeriors issued the SB to provide inspection instructions and the modification SB to provide instructions to modify the affected seats. Aviointeriors also revised the Component Maintenance Manuals (CMM) to include updated instructions for installing an affected pouch.
>
> For the reason described above, EASA issued AD 2018–0264, requiring inspection of the affected seats and, depending on findings, accomplishment of applicable corrective action(s). Since that [EASA] AD was issued, it was determined that affected seats may have received an additional P/N related to the aircraft modification addressing the installation of the seats. This [EASA] AD is revised to clarify the Applicability by inserting Note 1 into Appendix 1 of this [EASA] AD.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0557.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Aviointeriors Mandatory Service Bulletin (MSB) No. 16/18, Rev. 1, dated October 11, 2019, and Aviointeriors Optional Service Bulletin (OSB) No. 18/18, Rev. 2, dated March 11, 2019. The MSB describes procedures for inspection and horizontal installation of the life vest pouch assembly. The OSB describes procedures for an alternative (vertical) inspection and installation of the life vest pouch assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing

this AD because it evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require inspection of the life vest pouch assembly and, depending on the results of the inspection, replacement of the life vest pouch.

Differences Between This Proposed AD and the MCAI

EASA AD 2018–0264R1, dated April 4, 2019, refers to Aviointeriors OSB No. 18/18, Rev. 1, dated October 16, 2018. This FAA AD refers to Aviointeriors OSB No. 18/18, Rev. 2, dated March 11, 2019. EASA reasoned that they are aware of Aviointeriors OSB No. 18/18, Rev. 2, but because none of their operators opted to implement the optional vertical installation modification within Aviointeriors OSB No. 18/18, EASA determined it was not necessary to refer to the latest revision of the service bulletin.

Costs of Compliance

The FAA estimates that this proposed AD affects an unknown number of passenger seats installed on, but not limited to, Boeing 777–200 and 777–300 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Inspect life vest pouch assembly	0.2 work-hours × $85 per hour = $17	$0	$17
Replace life vest pouch assembly	0.1 work-hours × $85 per hour = $8.50	172	180.50

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aviointeriors S.p.A.: Docket No. FAA–2019–0557; Product Identifier 2019–NE–17–AD.

(a) Comments Due Date

The FAA must receive comments by September 30, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Aviointeriors S.p.A. (Aviointeriors) Centaurus Economy Class 13E, 13H, and 13K passenger seats with a seat part number (P/N) listed in Figure 1 to paragraph (c)(1) of this AD, with life vest pouch, P/N 313907100004, installed.

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Figure 1 to Paragraph (c)(1) – Passenger Seat P/Ns

Seat Type	Passenger Seat P/Ns		
13E	13EA5Z5204JV	13EA9Z5506JV	13EG7Z1204RV
	13EA5Z5203JV	13EG5Z1204RV	13EG6Z5703RV
	13EA5Z5304JV	13EG5Z1203RV	13EG6Z5704RV
	13EA5Z5303JV	13EG5Z5204RV	13EG2Z5203RV
	13EA6Z5404JV	13EG5Z5203RV	13EG2Z5204RV
	13EA6Z5403JV	13EG5Z5304RV	13EG9Z5506RV
	13EA7Z5204JV	13EG5Z5303RV	13EG8Z5704RV
	13EA7Z5203JV	13EG7Z5204RV	13EG8Z5703RV
	13EA8Z5404JV	13EG7Z5203RV	13EG5Z5207RV
	13EA8Z5403JV	13EG4Z5506RV	13EG5Z5208RV
	13EA4Z5506JV	13EG9Z5610RV	13EG6Z5404RV
	13EA9Z5610JV	13EF4Z5509RV	13EG6Z5403RV
	13EC4Z5509JV	13EF3Z5506RV	13EG8Z5404RV
	13EC3Z5506JV	13EG7Z1203RV	13EG8Z5403RV
13H	13HR1Z5222JV	13HR5Z1203RV	13HR6Z5203RV
	13HR1Z5221JV	13HR5Z5222RV	13HR6Z5204RV
	13HR2Z5123JV	13HR5Z5221RV	
	13HR5Z1204RV	13HR4Z5123RV	
13K	13KA5Z5208JV	13KG5Z5208RV	
	13KA5Z5207JV	13KG5Z5207RV	

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(2) These appliances are installed on, but not limited to, Boeing 777–200 and 777–300 airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 2561, Life Jacket.

(e) Unsafe Condition

This AD was prompted by reports of life vest pouches installed incorrectly on certain seats. The FAA is issuing this AD to prevent the life vest from failing to extract from the pouch during an emergency. The unsafe condition, if not addressed, could result in having to evacuate the airplane without a life vest, possibly resulting in injury or death to passengers.

(f) Compliance

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

(g) Required Actions

(1) Within three months or 600 flight hours after the effective date of this AD, whichever occurs first, inspect the affected seat life vest pouch assembly using Paragraph 2, Life Vest Inspection, of Aviointeriors Mandatory Service Bulletin (MSB) No. 16/18, Rev. 1, dated October 11, 2018, or Paragraph 2, Life Vest Pouches Inspection, Aviointeriors Optional SB (OSB) No. 18/18, Rev. 2, dated March 11, 2019.

(2) If, during the inspection required by paragraph (g)(1) of this AD, a life vest pouch velcro strip is found damaged or worn, before further flight, remove the life vest pouch from service and replace it with a part eligible for installation using Paragraphs 3 through 5, inclusive, of Aviointeriors MSB No. 16/18, Rev. 1, dated October 11, 2018, or Aviointeriors OSB No. 18/18, Rev. 2, dated March 11, 2019.

(3) If, during the inspection required by paragraph (g)(1) of this AD, a life vest pouch installation is not found acceptable, as defined in Paragraph 2 of Aviointeriors MSB No. 16/18, Rev. 1, dated October 11, 2018, or Aviointeriors OSB No. 18/18, Rev. 2, dated March 11, 2019, before further flight, remove the life vest pouch from service and replace it with a part eligible for installation using Paragraphs 3 through 5, inclusive, of Aviointeriors MSB No. 16/18, Rev. 1, dated October 11, 2018, or Aviointeriors OSB No. 18/18, Rev. 2, dated March 11, 2019.

(h) Installation Prohibition

After the effective date of this AD, do not install an Aviointeriors Centaurus Economy Class passenger seat with a P/N identified in paragraph (c) of this AD unless the affected seat life vest pouch assembly has been inspected in accordance with paragraph (g)(1) of this AD, and depending on the finding, replaced with a part eligible for installation.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018–0264R1, dated April 4, 2019, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–0557.

(3) For service information identified in this AD, contact Aviointeriors S.p.A., Customer Support, Via Appia Km. 66,4; 04013 Latina, Italy; phone: +39 0773 6891; fax: +39 0773 631546; email: *customer-support@aviointeriors.it;* internet: *http://www.aviointeriors.it.* You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on August 12, 2019.

Robert J. Ganley,

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

[FR Doc. 2019–17510 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA–2010–0034]

RIN 1218–AD18

Occupational Exposure to Respirable Crystalline Silica—Specified Exposure Control Methods

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for Information (RFI).

SUMMARY: OSHA is requesting information on the effectiveness of engineering and work practice control methods not currently included for the tasks and equipment listed on Table 1 of the Respirable Crystalline Silica standard for construction. The agency is also requesting information on tasks and equipment involving exposure to respirable crystalline silica that are not currently listed on Table 1, along with information on the effectiveness of engineering and work practice control methods in limiting worker exposure to respirable crystalline silica when performing those tasks. Finally, OSHA is requesting information and comment on whether there are additional circumstances where it would be appropriate to permit employers covered by the Respirable Crystalline Silica standards for general industry and maritime to comply with the silica standard for construction. This RFI requests comment and information, including exposure data, which could assist the agency in assessing whether revisions to the standards may be appropriate.

DATES: Submit comments on or before October 15, 2019.

ADDRESSES: Submit comments and additional materials using any of the following methods:

Electronically: You may submit comments and attachments electronically via *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand delivery, or messenger/courier service (hard copy): You may submit your comments and any additional materials to the OSHA Docket Office, Docket No. OSHA–2010–0034, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–2350 (TTY (877) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger/courier service) from 10 a.m. to 3 p.m. ET, weekdays.

Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA Docket Office (telephone: (202) 693–2350; email: *technicaldatacenter@dol.gov*) for information about security procedures concerning delivery of materials by express mail, hand delivery, and messenger service.

Instructions for submitting comments: All submissions must include the agency's name (OSHA), the title of this RFI (Occupational Exposure to Respirable Crystalline Silica—Specified Exposure Control Methods), and the docket number for this RFI (OSHA–2010–0034). OSHA will place all comments and other materials, including any personal information you provide, in the public docket without revision, and these materials will be available online at *https://www.regulations.gov.* Therefore, OSHA cautions you about submitting statements that you do not want made available to the public, or submitting comments that contain personal information such as Social Security numbers, birth dates, and medical data.

Docket: To read or download submissions or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. The *https://www.regulations.gov* index lists all documents in the docket. However, some information (*e.g.,* copyrighted material) is not available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press Inquiries: Frank Meilinger, Director, OSHA Office of Communications, telephone: 202–693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: William Perry or David O'Connor, Directorate of Standards and Guidance, telephone: 202–693–1950; email: *silica@dol.gov.*

Copies of this ***Federal Register*** *notice:* Electronic copies of this Request for Information are available at *https://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, is also available at OSHA's web page at *https://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 2016, OSHA published a final rule regulating occupational exposure to respirable crystalline silica (81 FR 16286). The final rule established a new permissible exposure limit (PEL) for respirable crystalline silica of 50 micrograms per cubic meter of air (50 $\mu g/m^3$) as an 8-hour time-weighted average in all industries covered by the rule. The rule also included other provisions, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, medical surveillance, hazard communication, and recordkeeping. OSHA issued two separate standards—one for construction (29 CFR 1926.1153) and one for general industry and maritime (29 CFR 1910.1053).[1]

[1] ''Maritime'' refers collectively to shipyards, marine terminals, and longshoring. While the shipyard standard is technically a separate standard, it is identical to the general industry standard. See 29 CFR 1915.1053 (cross-referencing 29 CFR 1910.1053). Marine terminals and longshoring are covered under 29 CFR 1910.1053. See 29 CFR 1917.1(a)(2)(xiii)) and 29 CFR 1918.1(b)(9)).

The construction standard provides employers with two options to limit worker exposures to respirable crystalline silica. Employers can assess employee exposures to silica and implement control measures that limit such exposures to the PEL (29 CFR 1926.1153(d)). But employers may instead choose to fully and properly implement the requirements in Table 1 for employees engaged in the 18 common construction tasks therein (29 CFR 1926.1153(c)). Table 1 lists each task's corresponding engineering and work practice control methods and respiratory protection requirements, if any.

For some Table 1 tasks, there was substantial evidence in the rulemaking record that exposure to respirable crystalline silica would be limited to the PEL most of the time using the specified engineering and work practice controls, so no respiratory protection is required. For the other Table 1 tasks, available evidence indicated that exposures would remain above the PEL after implementation of engineering and work practice controls, so respiratory protection is required. Several tasks listed on Table 1 provide a choice of compliance methods because each can consistently reduce exposures to the PEL or below, or are equally effective in limiting exposure. For example, for jackhammers and handheld powered chipping tools, employers can satisfy Table 1's requirements by using either a tool with a water delivery system that supplies a continuous stream or spray of water to the point of impact, or a tool equipped with a commercially available shroud and dust collection system.

OSHA developed Table 1's list of controls using data from sources including National Institute for Occupational Safety and Health reports, OSHA compliance case files, published literature, and unpublished information submitted to the rulemaking docket. These data sources encompassed several types of studies assessing the effectiveness of control methods, including air-sampling studies performed during normal work activities and experimental studies performed in controlled environments.

OSHA concluded that Table 1 was the best approach for protecting employees exposed to respirable crystalline silica and also simplified compliance and reduced burdens on employers in the construction industry. Table 1's approach further recognizes and avoids the challenges of accurately assessing employee exposures to respirable crystalline silica in construction work due to frequent changes in workplace conditions, such as environment and location.

During the rulemaking process, some stakeholders urged OSHA to consider how to update Table 1 in the future to include new control methods that might be developed. OSHA responded that it saw the value in periodically updating Table 1 and that a static Table 1 could discourage the development of new control technologies for reducing silica exposure. OSHA is now requesting information on additional engineering and work practice control methods that could limit exposures generated by the equipment and tasks currently listed on Table 1. The agency is also requesting information on engineering and work practice control methods that could limit exposures generated by equipment or tasks not already included on Table 1. This information will help OSHA decide whether to revise Table 1.

During the rulemaking, some commenters expressed concerns about determining which standard—general industry or construction—applies to certain activities. OSHA recognized that in some circumstances, general industry activities may be indistinguishable from the construction tasks listed on Table 1, and may be performed in varied environments and conditions. To address those circumstances, OSHA included paragraph (a)(3) in the general industry and maritime standard. Paragraph (a)(3) permits general industry and maritime employers to follow the construction standard when (1) the task performed is indistinguishable from a construction task listed on Table 1, and (2) the task will not be performed regularly in the same environment and conditions. The second requirement recognizes that Table 1 was intended, in part, to accommodate situations where tasks will be performed in different environments and conditions. OSHA is interested in information and comment on whether there are additional circumstances where similar flexibility would benefit employers while maintaining protections for workers, such as when Table 1 tasks are regularly performed in general industry or maritime in a relatively stable and predictable environment.

If the information submitted in response to this RFI indicates that revisions to the silica standards may be appropriate, OSHA will publish a Notice of Proposed Rulemaking and provide an opportunity for public comment on the proposed revisions before making any changes to the standards.

II. Request for Data, Information, and Comment

A. Questions Regarding Possible Additions to Table 1

OSHA requests data, information, and comment on possible additions to Table 1. The agency is especially interested in responses to the numbered questions presented below. OSHA requests that comments reference the numbered questions to the extent possible. Commenters should explain their rationale and, if possible, provide information and data to support their comments and recommendations.

OSHA requests that submissions of exposure monitoring data include the following information, where possible:

- *Description of task:* A description of the task(s) performed and work practices followed during the exposure monitoring, including any housekeeping measures, as well as job titles and number of workers monitored during the task(s). The description should also include information regarding the frequency and duration of the task being performed. For example, the description should report the number of times a task (*e.g.,* drilling holes in concrete) was performed during the exposure monitoring period.
- *Description of equipment:* Indicate the make and model of the equipment used to perform the task. Provide a copy of equipment manufacturer's instructions, if available.
- *Description of engineering and work practice control methods:* Indicate the make and model of any equipment used to control exposures, as well as information on the condition (*e.g.,* intact hoses, connections) and maintenance of the equipment. For vacuum dust collection systems, indicate the air flow rate, type of filter, and filter cleaning mechanism, if any. For water delivery systems, indicate the water source, volume, and flow rate. Provide a copy of the control equipment manufacturer's instructions, if available. If a work practice control was used to control exposures, describe the work practices that were implemented in as much detail as possible.
- *Description of materials:* Describe the material worked on during the task(s) and indicate its crystalline silica content, if possible. When working with concrete or other materials with characteristics that may change over time, please note how long a substrate was cured before starting work.
- *Description of environmental conditions:* Characterize the environmental conditions during monitoring, such as whether the work was performed outdoors, indoors, or in

an enclosed area with restricted air flow. For work performed indoors, describe the size of the room. For work performed outdoors, note weather conditions such as temperature, humidity, and precipitation, as well as the presence of water in the soil or on surfaces. Also note the presence of natural or mechanical ventilation, such as air movement caused by the wind; doors or windows (open or closed and their number and sizes); or ventilation systems for heating and cooling and whether they were operational during monitoring.

• *Sampling and analytical procedures:* Describe sampling results, sampling and analytical methods (*e.g.,* OSHA ID–142; NMAM 7500), and the devices used to obtain samples. Indicate the sampling duration and whether the samples represent a personal breathing zone or a well-defined area. While OSHA requests all sampling results, it is especially interested in personal breathing zone samples with a duration of 120 minutes or greater. Report the detection limit and air volume where the concentration of respirable crystalline silica falls below the limit of detection. Indicate whether a laboratory that analyzes air samples for respirable crystalline silica in accordance with Appendix A of the silica standards evaluated the samples. Please present sample results in units of micrograms of respirable crystalline silica per cubic meter of air.

Additional Exposure Control Methods for Equipment or Tasks Listed on Table 1

OSHA requests information and data on the effectiveness of the following control methods for reducing respirable crystalline silica exposure for equipment and tasks listed on Table 1:

1. Commercially available dust collection systems for stationary masonry saws;
2. Commercially available dust collection systems for handheld power saws (any blade diameter), including handheld masonry saws;
3. Commercially available dust collection systems for walk-behind saws, including ''soft cut'' saws used for cutting ''green'' concrete (*i.e.,* concrete that has set but has not fully cured);
4. Commercially available dust collection systems for drivable saws;
5. Commercially available dust collection systems for rig-mounted core saws or drills;
6. Integrated water delivery systems for handheld and stand-mounted drills (including impact and rotary hammer drills);
7. Commercially available dust collection systems incorporating hollow drill bits for handheld and stand-mounted drills (including impact and rotary hammer drills), including information on any relationship between the drill bit size and the amount of airborne respirable crystalline silica generated or the performance of engineering controls;
8. Commercially available dust collection systems, with or without filter-cleaning mechanisms, for cordless handheld drills;
9. Integrated water delivery systems for dowel drilling rigs for concrete, including information on any relationship between drill bit size and the amount of airborne respirable crystalline silica generated or the performance of engineering controls;
10. Commercially available dust collection systems with general purpose filters instead of filters with 99% or greater efficiency;
11. Commercially available dust collection systems equipped with cyclonic pre-separators—instead of filter-cleaning mechanisms—for handheld power saws (any blade diameter), handheld and stand-mounted drills (including impact and rotary hammer drills), jackhammers and handheld powered chipping tools, and walk-behind milling machines and floor grinders;
12. Floor fans or pedestal fans positioned to disperse dust away from workers when using handheld power tools, including handheld power saws (any blade diameter), handheld and stand-mounted drills (including impact and rotary hammer drills), and jackhammers and handheld powered chipping tools; and
13. Any other exposure control methods that you believe should be included for equipment or tasks listed on Table 1.

Additional Equipment or Tasks To Include on Table 1

OSHA requests information and data on the effectiveness of the following exposure control methods for equipment or tasks not listed on Table 1:

14. Commercially available dust collection systems for power sanders (*e.g.,* belt sanders, orbital sanders);
15. Commercially available dust collection systems for power paint scrapers;
16. Commercially available hoods with dust collection systems for reciprocating saws;
17. Integrated water delivery systems for wire saws; and
18. Wet methods, commercially available dust collection systems, commercially available dust suppression compounds, or work practices that minimize generation of dust for clean-up tasks, including changing or cleaning filters in dust collection systems.

OSHA requests information and data on the effectiveness of any exposure control methods for the following equipment or tasks not listed on Table 1:

19. Mixing of dry materials containing crystalline silica (*e.g.,* mortar, plaster, drywall compound, fireproofing, exterior insulation and finishing system base and finish coats);
20. Application of shake (*e.g.,* coloring and/or texturizing material) on poured concrete floors;
21. Use of chainsaws to cut silica-containing materials;
22. Use of powered sweepers (*e.g.,* trucks equipped with rotating brushes) to clean surfaces;
23. Application of dry-mix or wet-mix shotcrete;
24. Drywall finishing; OSHA did not include drywall finishing on Table 1 because use of drywall compounds containing silica only as a trace contaminant was generally expected to result in low exposures even without additional controls. However, the agency recognizes that some drywall finishing may involve compounds with higher or unknown silica content, or circumstances that may warrant concern for exposure above the PEL;
25. Demolition of silica-containing materials using manual tools (*e.g.,* sledgehammer, mason hammer, pry bar, chisel); and
26. Any other equipment or task you believe should be included on Table 1.

B. Additional Requests

27. OSHA requests information on stakeholders' experience with Table 1 controls, including any challenging aspects of implementing specified controls; situations where specified controls were not available; and situations where specified controls were infeasible, but alternative controls were feasible and effective;
28. OSHA requests any alternative names used by workers or manufacturers to describe the tasks and equipment on Table 1 in different industry sectors or areas of the country;
29. Employers covered by the respirable crystalline silica standard for general industry and maritime have the option to follow Table 1 and the standard for construction where the task performed is indistinguishable from a construction task listed on Table 1, and

the task will not be performed regularly in the same environment and conditions (29 CFR 1910.1053(a)(3)). Are there any other circumstances where similar flexibility would benefit employers while maintaining protections for workers? Describe those circumstances, state your reasoning, and include any relevant data;

30. OSHA requests information on any economic impacts that should be considered in determining whether to update Table 1 or broaden the circumstances under which general industry and maritime employers could comply with the silica standard for construction. Include quantitative safety and health benefits (*e.g.,* information on the duration and magnitude of workers' silica exposure), cost savings (*e.g.,* lower operations costs, more efficient use of capital, less expensive equipment, increased productivity, decreased need for exposure monitoring), and costs (*e.g.,* increased compliance costs, decreases in productivity, increased need for exposure monitoring); and

31. The Regulatory Flexibility Act (5 U.S.C. 601, as amended) requires OSHA to assess the impact of proposed and final rules on small entities. How many and what kinds of small businesses, or other small entities, could be affected if OSHA decides to revise Table 1 and related provisions in 29 CFR 1910.1053, 1915.1053, or 1926.1153? Describe any such effects, including the size and scope of operation for affected small entities and the likely technical, economic, and safety impacts for those entities. Explain how answers to any of the questions in this RFI would be different for small entities, and describe any problems or issues related to Table 1 that are unique to small entities.

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 653, 655, 657; 33 U.S.C. 941; 40 U.S.C. 3704 *et seq.;* Secretary of Labor's Order 1–2012 (77 FR 3912, 1/25/2012); and 29 CFR part 1911.

Signed at Washington, DC, on August 9, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–17450 Filed 8–14–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0329]

RIN 1625–AA08

Special Local Regulation; Ohio River, Portsmouth, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Special Local Regulation on the Ohio River. This action is necessary to provide for safety of life on the Ohio River from mile marker 355.5 to mile marker 356.8 during a regatta from August 31, 2019 through September 2, 2019. This proposed rulemaking would restrict access to this portion of the river unless otherwise authorized by the Captain of the Port Sector Ohio Valley or a 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 September 16, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0329 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 Cornelius, MSU Huntington, U.S. Coast Guard; 304–733–0198, *Wesley.p.cornelius@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Breakwater Powerboat Association submitted an application to Coast Guard Sector Ohio Valley for a marine event permit to conduct a power boat race from August 31, 2019 through September 02, 2019. This race will be the National Championship for two classes of powerboats. The race course will be the area from Ohio River Mile Marker (MM) 355.5 to MM 356.8. Hazards from the regatta include collision of vessels, wake, capsizing, and interference to Aids to Navigation. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the regatta would be a safety concern for anyone within the race course area.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the race course before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under the authority in 46 U.S.C. 70041 (previously 33 U.S.C 1233)

III. Discussion of Proposed Rule

The COTP is proposing to establish a Special Local Regulation from August 31, 2019 through September 02, 2019. The special local regulation would cover all navigable waters from Ohio River Mile Marker (MM) 355.5 to MM 356.8. The duration of the regulation is intended to ensure the safety of vessels and these navigable water before, during, and after the scheduled regatta. No person would be permitted to enter the area without obtaining approval from the Captain of the Port or a designated representative. The event sponsor has scheduled commercial traffic breaks to prevent a back-up of vessels. 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.

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 special local regulation. The safety zone will be enforced on a small

area of the Ohio River from 9 a.m. through 6 p.m. on August 31, 2019, from 7 a.m. through 5:30 p.m. on September 1, 2019, and from 7 a.m. through 4 p.m. on September 2, 2019. Breaks have been scheduled so that the event does not significantly impede commercial traffic. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule would allow vessels to seek permission to enter or transit 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 owner or operators of vessels intending to transit the area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation lasting from August 31, to September 02, 2019 that would restrict entry into the race course from MM 355.5 to MM 356.8. Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend part 100 as follows:

PART 100—SAFETY OF LIFE ON THE NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T08–0329 to read as follows:

§ 100.T08–0329 Special Local Regulation; Ohio River, Portsmouth, OH.

(a) *Location.* All navigable waters of the Ohio River from mile marker (MM) 355.5 to MM 356.8 Portsmouth, OH.

(b) *Effective period.* This section is effective from August 31, 2019 through September 2, 2019.

(c) *Enforcement period.* The section will be enforced from 9 a.m. through 6 p.m. on August 31, 2019, from 7 a.m. through 5:30 p.m. on September 1, and from 7 a.m. through 4 p.m. on September 2, 2019.

(d) *Special local regulations.* (1) Entry into this area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

(2) Recreational vessels are permitted to transit the regulated area during scheduled breaks for commercial traffic. There shall be no anchoring or loitering in the navigation channel. Recreational vessels transiting into and away from this area are restricted to the slowest safe speed creating minimum wake.

(3) The COTP may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(4) All persons or vessels desiring entry into or passage through the area must request permission from the COTP or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2019–17415 Filed 8–14–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0331; FRL–9998–03–Region 5]

Air Plan Approval; Illinois; NAAQS Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state submission as a revision to the Illinois state implementation plan (SIP). The revision, submitted on May 30, 2019, incorporates several revisions to Illinois's air pollution control rules entitled ''Ambient Air Quality Standards'' and is related to the National Ambient Air Quality Standards (NAAQS). The revision updates the ''List of Designated Reference and Equivalent Methods'' in response to EPA rulemakings. In addition, Illinois addresses EPA's revocation of the 1971 sulfur dioxide (SO_2) and the 1978 lead (Pb) NAAQS.

DATES: Comments must be received on or before September 16, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2019–0331 at *http://www.regulations.gov* or via email to *blakley.pamela@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: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What are the State rule revisions?
II. What is EPA's analysis of the State's submittal?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What are the State rule revisions?

On May 30, 2019, the Illinois Environmental Protection Agency (IEPA) submitted a request to EPA to incorporate revisions to the Illinois air pollution control rules in Title 35 of the Illinois Administrative Code, Part 243—Air Quality Standards (Part 243). The submission updates the following rules in Part 243: Sections 243.108, 243.120, 243.122, 243.125, and 243.126. Part 243 includes Illinois's regulation adoption of ambient air quality standards related to the NAAQS.

II. What is EPA's analysis of the State's submittal?

Illinois revised Part 243 to reflect amendments to EPA's ''List of Designated References and Equivalent Methods'' used to determine compliance with the NAAQS (fine particulate matter ($PM_{2.5}$) and coarse particulate matter (PM_{10}), SO_2, carbon monoxide (CO), Pb, oxides of nitrogen (NO_X), and ozone (O_3)). In addition to these changes Illinois updated existing rule language to address EPA's revocation of the 1971 SO_2 and the 1978 Pb NAAQS.

Other revisions to Part 243 include a range of administrative changes, such as making grammatical corrections to language updates; removing the unnecessary version date from the Code of Federal Regulations (CFR) citations and updating the CFR citations to the latest version available.

EPA is proposing to approve the revisions to Part 243 which are described below:

Section 243.108 Incorporation by Reference—incorporates by reference EPA's ''List of Designated Reference and Equivalent Methods'' for measuring ambient concentrations to demonstrate compliance with the NAAQS ($PM_{2.5}$ and $PM_{10,}$ SO_2, CO, Pb, NO_X, and O_3).

EPA designated two new Federal reference monitoring methods on February 13, 2018 (83 FR 6174) and on June 1, 2018 (83 FR 13198) for nitrogen dioxide (NO_2) in ambient air. On June 15, 2018, EPA updated the ''List of Designated Reference and Equivalent Methods'' to include these new Federal reference monitoring methods for NO_2. The proposed SIP revision would update section 243.108 to incorporate the changes based on EPA's action dated June 15, 2018.

Additionally, Illinois updated section 243.108, to incorporate by reference the following monitoring methods: Appendices A–1, A–2, B, C, D, F, G, H, I, J, K, L, N, O, P, Q, R, S, T and U of 40 CFR part 50, to the 2018 edition of the CFR.

Section 243.120 PM_{10} and $PM_{2.5}$—contains the 1987 and 1997 primary and secondary standards and measurement methods for PM_{10} and $PM_{2.5}$. In this section, the revisions are administrative changes.

Section 243.122 Sulfur Oxides (Sulfur Dioxide)—contains the 1971 primary and secondary standards and measurement methods for sulfur oxide (as SO_2), respectively, in subsections 243.122(a) and (b).

In this section, Illinois revised subsection 243.122(a)(5) by updating the ''Board note'' listing the specific areas where the 1971 NAAQS no longer applies. These areas in Illinois have been designated nonattainment for the more stringent 2010 primary SO_2 NAAQS. Thus, the proposed revision will only revoke the 1971 standard where EPA has adopted Round 1 and Round 2 area designations for the 2010 NAAQS for SO_2 (78 FR 47191; 81 FR 45039).

Section 243.125 Ozone—contains the 2008 and 2015 primary and secondary 8-hour standards and measurement methods for O_3. In this section the revisions are administrative changes.

Section 243.126 Lead—contains the 1978 and 2008 primary and secondary standards and measurement methods for Pb, respectively, in subsections 243.126(a) and 243.126(b). In this section, Illinois proposed to revoke the 1978 NAAQS for Pb by removing the provision in subsection 243.126(a).

EPA's final 2008 Pb regulation states that the 1978 NAAQS for Pb no longer applies one year after the effective date. (November 12, 2008, 73 FR 66964). Illinois updated a Board note explaining the reason for the removal of the 1978 NAAQS based on EPA designation of the Granite City area nonattainment for the 2008 primary and secondary three-month average NAAQS for Pb effective December 31, 2011 and an area of Chicago effective December 31, 2012. See 75 FR 71033, 71042 (Nov. 22, 2010); 76 FR 72097, 79108 (Nov. 22, 2011)). The remaining areas of the state were designated as ''unclassifiable/attainment'', effective December 31, 2012.

Section 110(l) Analysis of the State's Submittal

EPA is proposing to approve the revisions to Part 243 discussed above because the revisions meet all applicable requirements under the Clean Air Act (CAA), consistent with section 110(k)(3) of the CAA. Furthermore, Illinois has shown that the revisions to Part 243 do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement, consistent with section 110(l) of the CAA.

Under Section 110(l) of the CAA, EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA) or any other applicable requirement of the CAA. The proposed SIP revision would not interfere with any applicable CAA requirements based on technical analysis submitted by Illinois. Part 243 contains the state's ambient air quality standards, which are consistent with the NAAQS. The changes to the ambient air quality standards in Part 243 rules will have no effect on actual or allowable emissions as they only clarify EPA's rulemaking related to the NAAQS.

Illinois has shown there is no impact of revising Part 243 that would hinder Illinois's ability to maintain and meet the NAAQS for NO_2, O_3, Pb, $PM_{2.5}$, PM_{10}, SO_2, and CO. Therefore, these revisions to Part 243 are approvable as they update Part 243 to be consistent with EPA's rulemaking related to the NAAQS. The revisions will not increase any emissions to the atmosphere because they do not impact on any source applicability or emissions.

III. What action is EPA taking?

EPA is proposing to approve revisions to Illinois's Part 243 submitted on May 30, 2019, as a revision to the Illinois SIP. EPA is also proposing approval of a revision removing the provisions of the 1978 NAAQS for Pb, specifically, section 243.126(a)(1) and (2) from Part 243.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to incorporate by reference revisions to 35 Illinois Administrative Code Part 243 ''Air Quality Standards'', sections 243.108, 243.120, 243.122, 243.125, and 243.126, effective February 19, 2019. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: July 30, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2019–17350 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0354; FRL–9998–07–Region 8]

Finding of Failure To Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado nonattainment area (Denver Area) failed to attain the 2008 ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date for ''Moderate'' nonattainment areas. The effect of failing to attain by the attainment date is that the area will be reclassified by operation of law to ''Serious'' upon the effective date of the final reclassification notice. The EPA is proposing deadlines for submittal of those SIP revisions and implementation of the related control requirements. This proposed action is necessary to fulfill the EPA's statutory obligation to determine whether the Denver Area attained the NAAQS by the attainment date, and, within six months of the attainment date, publish a document in the **Federal Register** identifying each area that is determined as having failed to attain and its reclassification. Previously, the EPA had proposed on November 14, 2018, to grant a request by the State of Colorado for a 1-year attainment date extension for the Denver Area, but by letter dated March 26, 2019, the Governor of Colorado withdrew the State's previous request for this extension. This proposal withdraws the EPA's previous proposed approval of the State's now-withdrawn extension request. This document also announces a public comment period and details for a scheduled public hearing to provide the public with an opportunity to present oral testimony on the proposal. The comment period will ensure the public has sufficient time to comment on the proceedings of the public hearing and the proposal.

DATES: The public hearing will be held on September 6, 2019 beginning at 9 a.m. Mountain Time (MT). Written comments must be received on or before September 16, 2019. Please refer to the **ADDRESSES** for additional information on the public hearing and comment period.

ADDRESSES:

Public Hearing. The public hearing will be held on the 2nd floor of the EPA Region 8 office, 1595 Wynkoop St., Denver, CO 80202. The public hearing will convene at 9:00 a.m. and end one hour after the last registered speaker has spoken, or no later than 5:00 p.m. mountain time (MT) in any event. A lunch break is scheduled from 1:00 to 2:00 p.m. MT. The public hearing will be held in a federal building. Individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff to gain access to the meeting room. The REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect July 21, 2014. If your driver's license is issued by American Samoa, you must present an additional form of identification to enter the federal building where the public hearing will be held. Acceptable alternative forms of identification include Federal employee badges, passports, enhanced driver's licenses, and military identification cards. For additional information for the status of your state regarding REAL ID, go to *http://www.dhs.gov/real-id-enforcement-brief.*

Oral testimony will be limited to five minutes for each commenter. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (by email) or in hard copy form.

Written Comments: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0354, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.* Written statements and supporting information that are submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be postmarked by the last day of the comment period.

Pertinent comments submitted in response to the EPA's November 2018 proposal to grant the State of Colorado's request for a 1-year attainment date extension for the Denver Area, which were part of a national rulemaking concerning Moderate areas, will be considered in this action and do not need to be re-submitted. Other documents from the national rulemaking that are relevant to this proposed action for the Denver Area will also be included in the docket for this action. However, we are not re-opening comment in this proposal on any of the final agency actions for the other Moderate Areas addressed in the national rulemaking.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What is the EPA proposing and what is the rationale?

The EPA designated the Denver Area as nonattainment and classified the area as Marginal on July 20, 2012. On May 4, 2016, the EPA published its determination that the Denver Area had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline, and that the Denver area was accordingly reclassified to a Moderate ozone nonattainment area.[1] On November 14, 2018, the EPA proposed to grant the request from the State of Colorado for a 1-year attainment date extension for the Denver Area for the 2008 ozone NAAQS.[2] On March 26, 2019, the Governor of Colorado sent a letter to EPA Region 8 Administrator to withdraw the State's previous request for a 1-year attainment date extension for the 2008 ozone NAAQS.[3] Accordingly, the EPA is now proposing to determine that the Denver Area failed to attain the 2008 ozone NAAQS by its applicable attainment date.[4]

The 2008 ozone NAAQS is met at an ambient monitoring site when the design value[5] does not exceed 0.075 parts per million (ppm). For areas classified as Moderate nonattainment for the 2008 ozone NAAQS, the attainment date was July 20, 2018. Because the design value is based on the three most recent complete calendar years of data prior to the attainment date, the EPA's proposed determination for the Denver Area is based upon the complete, quality-assured and certified ozone monitoring data from calendar years 2015, 2016, and 2017.

Data from all monitors in an area must be evaluated when determining if the area attains the NAAQS. For the EPA to make a determination as to whether an area has attained the NAAQS, each monitor must have a valid[6] design value meeting the standard. If one or more monitors in an area have a design value that exceeds the standard, the area does not attain the NAAQS. The Denver Area's 2015–2017 design value was 0.079 ppm, exceeding the standard of 0.075 ppm. See 83 FR 56784.

As noted above, the State has withdrawn its previous request for a 1-year extension of the attainment date to July 20, 2019, and as a result the Denver Area is no longer eligible for a 1-year attainment date extension under section 181(a)(5) of the CAA and 40 CFR 51.1107. As stated in the Clean Air Act's attainment date extension provision for ozone nonattainment areas, section 181(a)(5), ''[u]pon application by any State,'' the EPA may extend an area's attainment date by one year provided certain criteria are met. The EPA interprets a state's application to be a necessary prerequisite to granting the 1-year extension.[7] Therefore, based on the applicable ozone design value, in this document the EPA is proposing to determine that the Denver Area did not attain by the attainment date of July 20, 2018, and is providing notice of the area's proposed reclassification to Serious, as required under CAA section 181(b)(2). If the EPA finalizes the determination that the area failed to attain by the attainment date, it will be reclassified to Serious by operation of law. The reclassified area will then be subject to the Serious area requirement to attain the 2008 ozone NAAQS as expeditiously as practicable, but not later than 9 years from the date of original designation, or July 20, 2021.

II. Serious Area SIP Revision Submission Deadlines and Reasonably Available Control Technology (RACT) Implementation Deadlines

Once an area is reclassified as Serious, the state must submit to the EPA the SIP revisions for the area that satisfy the statutory and regulatory requirements applicable to Serious areas established in CAA section 182(c) and in the 2008 Ozone NAAQS SIP Requirements Rule.[8] Since the deadlines in section 182(c) were based on the 1990 date of enactment of amendments to the CAA and have already passed, in separate rulemakings the EPA is adjusting the deadlines[9] for submitting the SIP revisions required for Serious areas.[10] The EPA is finalizing SIP revision and RACT Implementation deadlines for reclassified Serious areas in an August 2019 national rulemaking.[11] A copy of the pre-publication version of the national rulemaking can be found at *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment.*

In accordance with CAA section 182(i), in order to ''assure consistency among the required submissions'' for Moderate areas across the country that failed to attain by the July 20, 2018 attainment date, for the Denver Area we are proposing the same SIP submission due dates and implementation deadlines as we are finalizing in the August 2019 national rulemaking.

We note that these proposed deadlines will result in shorter timeframes between a final action on this determination and reclassification and the SIP submission and RACT implementation deadlines for Denver than for the other reclassified Moderate areas addressed in the national rulemaking. However, the governor's

[1] See 81 FR 26697; 40 CFR 81.306.

[2] *See* 83 FR 56781. Upon a state's request, a nonattainment area for the 2008 ozone NAAQS may obtain a 1-year extension if, for the most recent year prior to the attainment date, the fourth-highest daily maximum 8-hour average ozone concentration does not exceed 0.075 parts per million (ppm) and the area is complying with all obligations of its applicable implementation plan. See CAA section 181(a)(5)(B) and 40 CFR 51.1107.

[3] Letter, ''Withdrawal of Colorado's Request to Extend the 2008 Ozone National Ambient Air Quality Standard Attainment Date for the Denver Metropolitan/North Front Range Nonattainment Area'' (March 26, 2019), available in the docket; *see also* Press release, ''In an Effort to Improve Air Quality, Colorado to Withdraw Extension Request for National Air Standard Compliance,'' Colorado Governor Jared Polis (March 29, 2019), available at *https://www.colorado.gov/governor/news/effort-improve-air-quality-colorado-withdraw-extension-request-national-air-standard* (accessed June 25, 2019).

[4] We note that there is ongoing litigation alleging that the EPA has failed to perform its nondiscretionary duty under CAA section 181(b)(2) to determine whether the Denver Area attained the ozone standard by the applicable date. *WildEarth Guardians* v. *Wheeler,* Civ. Act. No. 1:19–09cv–0900897–JLK (D. Colo.). The EPA believes that final action on this proposal would moot the claim raised in that litigation.

[5] A design value is a statistic that describes the air quality status of a given location (*i.e.,* air quality monitor) to the level of the NAAQS and is used to determine compliance with the standard. The design value is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations. The design value is calculated for each air quality monitor in an area and the area's design value is the highest design value among the individual monitoring sites in the area. *See* 40 CFR part 50, appendix D—*Reference Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere (Chemiluminescence Method).*

[6] Design values attaining the 2008 ozone NAAQS must also meet minimum data completeness requirements specified in 40 CFR part 50, appendix P to be considered valid.

[7] *Cf. Del. Dep't of Natural Res. and Envtl. Control* v. *EPA,* 895 F.3d 90 (D.C. Cir. 2018) (interpreting section 181(a)(5)'s reference to ''any'' state literally to provide EPA with authority to grant an extension to a multi-state nonattainment area based on the extension request of only one state in that area).

[8] 80 FR 12264 (March 6, 2015).

[9] Under CAA section 182(i), reclassified areas are required to meet the requirements associated with their newly reclassified status according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is ''necessary or appropriate to assure consistency among the required submissions.'' Because these dates have already passed, the EPA is using its discretion granted under CAA section 182(i) to propose adjusting the deadlines for submitting SIP revisions that would otherwise apply under CAA section 182(c).

[10] Proposed rule, 83 FR at 56788 (Nov. 14, 2018); the final rule adjusting these deadlines is expected to be signed in August 2019, and the pre-publication version of the final rule is at *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment.*

[11] *See* docket ID number EPA–HQ–OAR–2018–0226.

letter withdrawing the extension request committed to ''moving aggressively forward and without delay in our efforts to reduce ground level ozone concentrations in the Denver Metro/North Front Range nonattainment area,'' and the EPA intends to support these efforts. As the Governor requested, we will continue to work with Colorado's air planning agencies to ''to develop appropriate and achievable schedules and strategies for continuing progress towards attainment of the 2008 NAAQS.''

Given the State's commitment to addressing its Serious Area obligations, and given section 182(i)'s focus on consistency, we propose that aligning Colorado's deadline with the national deadlines is appropriate and necessary for achieving ''consistency among the submissions'' of all reclassified areas across the country and supports achieving timely attainment in the Denver Area. A general discussion of CAA section 172(c) state submittal requirements for attainment plans and 182(c) SIP requirements that apply to Serious areas for the 2008 ozone NAAQS is included in the preamble of the November 14, 2018 proposed rulemaking.[12]

1. *Due date for Serious area SIP revisions (including RACT tied to attainment), and implementation deadline for RACT tied to attainment.*

Consistent with the final national notice, we are proposing for the Denver Area the same August 3, 2020 due date to submit Serious area SIP revisions, including RACT measures the State determines necessary for meeting reasonable further progress (RFP) or demonstrating timely attainment in the area, and to implement those RACT measures that are tied to timely attainment.

2. *Due date for SIP revisions for Serious area RACT not tied to attainment, and implementation deadline for Serious area RACT not tied to attainment.*

For Serious areas reclassified from Moderate, the requirement for RACT expands to include all sources that emit, or have the potential to emit, 50 tons per year of volatile organic compounds (VOC) or nitrogen oxides (NO_X).[13] For the Denver Area, we are proposing the same due date for submitting SIP revisions for any RACT provisions not otherwise needed for attainment purposes as the date finalized in the August 2019 national rulemaking for other areas: 18 months from the effective date of that national rulemaking. Additionally, consistent with the national notice, we propose for the Denver Area the deadline of July 20, 2021 for implementation of any new RACT requirements not otherwise needed for RFP or timely attainment purposes.

For further information and rationale supporting these proposed SIP due dates and implementation deadlines, please see our August 2019 rulemaking.

III. Statutory and Executive Order Reviews

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

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

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

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

C. Paperwork Reduction Act (PRA)

This rulemaking does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action proposes to: (1) Find that the Denver Area Moderate ozone nonattainment area failed to attain the 2008 NAAQS by the applicable attainment date; (2) identify the area subject to reclassification as Serious ozone nonattainment area by operation of law upon the effective date of the reclassification notice; and (3) adjust any applicable implementation deadlines. Thus, the proposed action does not establish any new information collection burden that has not already been identified and approved in the EPA's information collection request.[14]

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed determination of failure to attain the 2008 ozone NAAQS (and resulting reclassification) does not in and of itself create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

[12] *Id.*

[13] 30 *See* CAA sections 182(c) and 182(f).

[14] On April 30, 2018, the OMB approved EPA's request for renewal of the previously approved information collection request (ICR). The renewed request expires on April 30, 2021, 3 years after the approval date (*see* OMB Control Number 2060–0695 and ICR Reference Number 201801–2060–003 for EPA ICR No. 2347.03).

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. The results of this evaluation are contained in the section of the preamble titled ''Environmental Justice Considerations.''

List of Subjects in 40 CFR Part 52

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

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

Dated: August 8, 2019.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–17405 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R08–UST–2019–0827; FRL–9997–45–Region 8]

Montana: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State of Montana's Underground Storage Tank (UST) program submitted by the State. The EPA has determined that these revisions satisfy all requirements needed for program approval. This action also proposes to codify the EPA's approval of Montana's State program and incorporates by reference those provisions of the State's statutes and regulations that we have determined meet the requirements for approval. The EPA continues to retain its inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions in the State of Montana.

DATES: Send written comments by September 16, 2019.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
2. *Email: Martella.Theresa@epa.gov.*
3. *Mail:* Theresa Martella, Region 8, Environmental Scientist, RCRA Branch, (8LCR–RC), Land, Chemicals and Redevelopment Division, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
4. *Hand Delivery or Courier:* Deliver your comments to Theresa Martella, Region 8, Environmental Scientist, RCRA Branch, (8LCR–RC), Land, Chemicals and Redevelopment Division, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

Instructions: Direct your comments to Docket ID No. EPA–R08–UST–2018–0827. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The federal *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this action and associated publicly available materials from 8:30 a.m. to 4 p.m., Monday through Friday, at the following location: EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone number (303) 312–6329. Interested persons wanting to examine these documents should make an appointment with the office at least two days in advance.

FOR FURTHER INFORMATION CONTACT: Theresa Martella, Region 8, Environmental Scientist, RCRA Branch, (8LCR–RC), Land, Chemicals and Redevelopment Division, 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone number (303) 312–6329, email address: *Martella.Theresa@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

Authority: This rule is issued under the authority of sections 2002(a), 9004, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, State program approval, and Underground storage tanks.

Dated: August 7, 2019.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–17407 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–1

RIN 1250–AA09

Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Labor's (DOL's) Office of Federal Contract Compliance Programs (OFCCP) is proposing regulations to clarify the scope and application of the religious exemption contained in section 204(c) of Executive Order 11246, as amended. The proposed clarifications to the religious exemption will help

organizations with Federal Government contracts and subcontracts and federally assisted construction contracts and subcontracts better understand their Executive Order 11246 obligations.

DATES: To be assured of consideration, comments must be received on or before September 16, 2019.

ADDRESSES: You may submit comments, identified by RIN 1250–AA09, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 693–1304 (for comments of six pages or less).
- *Mail:* Harvey D. Fort, Acting Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW, Washington, DC 20210.

Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning OFCCP at (202) 693–0104 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers).

All comments received, including any personal information provided, will be available for public inspection during normal business hours at Room C–3325, 200 Constitution Avenue NW, Washington, DC 20210, or via the internet at *http://www.regulations.gov.* Upon request, individuals who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this notice of proposed rulemaking (NPRM) will be made available in the following formats: Large print, electronic file on computer disk, and audiotape. To schedule an appointment to review the comments and/or to obtain this NPRM in an alternate format, please contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT: Harvey D. Fort, Acting Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0104 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

Executive Summary

On July 2, 1964, President Lyndon B. Johnson signed the landmark Civil Rights Act of 1964. *See* Public Law 88–352, 78 Stat. 241. This legislation prohibited discrimination on various grounds in many of the most important aspects of civic life. Its Title VII extended these protections to employment opportunity, prohibiting discrimination on the basis of race, color, religion, sex, or national origin. In Title VII, Congress also provided a critical accommodation for religious employers. Congress permitted religious employers to take religion into account for employees performing religious activities: ''This title shall not apply . . . to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities. . . .'' *See* sec. 702(a), Public Law 88–352, 78 Stat. 255 (codified as amended at 42 U.S.C. 2000e–1(a)). Congress provided a similar exemption for religious educational institutions. *See* sec. 703(e)(2), Public Law 88–352, 78 Stat. 256 (codified at 42 U.S.C. 2000e–2(e)(2)).

Title VII's protections for religious organizations were expanded by Congress in 1972. Congress added a broad definition of ''religion'': ''The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.'' Equal Employment Opportunity Act of 1972, sec. 2(7), Public Law 92–261, 86 Stat. 103 (codified at 42 U.S.C. 2000e(j)). Congress also expanded the religious exemption in section 702 of Title VII and added educational institutions to the list of those eligible for exemption. In addition, Congress broadened the scope of the section 702 exemption to cover not just religious activities, but all activities of a religious organization: ''This title [VII] shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.'' Sec. 3, Public Law 92–261, 86 Stat. 104 (codified at 42 U.S.C. 2000e–1(a)). This expansion of the religious exemption to all activities of religious organizations was upheld against an Establishment Clause challenge unanimously [1] by the Supreme Court. *See Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints* v. *Amos,* 483 U.S. 327, 330 (1987).

One year after President Johnson signed the Civil Rights Act, he signed Executive Order 11246, requiring equal employment opportunity in federal government contracting. The order mandated that all government contracts include a provision stating that ''[t]he contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.'' Sec. 202(1), E.O. 11246, 30 FR 12319, 12320 (Sept. 28, 1965). Two years later, President Johnson expressly acknowledged Title VII of the Civil Rights Act when expanding Executive Order 11246 to prohibit, as does Title VII, discrimination on the bases of sex and religion. *See* sec. 3, E.O. 11375, 32 FR 14303 (Oct. 17, 1967). In 1978, the responsibilities for enforcing Executive Order 11246 were consolidated in DOL. *See* E.O. 12086, 43 FR 46501 (Oct. 5, 1978). In its implementing regulations, DOL imported Title VII's exemption for religious educational institutions. *See* 43 FR 49240, 49243 (Oct. 20, 1978) (now codified at 41 CFR 60–1.5(a)(6)); *cf.* 42 U.S.C. 2000e–2(e)(2). Finally, in 2002, President George W. Bush amended the executive order by expressly importing Title VII's exemption for religious organizations, which likewise has since been implemented by DOL's regulations. *See* sec. 4, E.O. 13279, 67 FR 77143 (Dec. 12, 2002); 68 FR 56392 (Sept. 30, 2003) (codified at 41 CFR 60–1.5(a)(5)); *cf.* 42 U.S.C. 2000e–1(a).

Because the exemption administered by OFCCP springs directly from the Title VII exemption, it should be given a parallel interpretation, consistent with the Supreme Court's repeated counsel that the decision to borrow statutory text in a new statute is a ''strong indication that the two statutes should be interpreted pari passu.'' *Northcross* v. *Bd. of Educ. of Memphis City Sch.,* 412 U.S. 427, 428 (1973) (per curiam). OFCCP generally interprets the nondiscrimination provisions of Executive Order 11246 consistent with the principles of Title VII. There has been some variation among federal circuit courts in interpreting the scope and application of the Title VII religious exemption. And many of the relevant court opinions predate the recent Supreme Court decisions and executive orders discussed below. In this proposed rule, OFCCP has sought to follow the principles articulated by these recent decisions and orders, and has interpreted the circuit-level case law in light of them. OFCCP draws on Title

[1] Justice White wrote the majority opinion for five justices. Justices O'Connor, Blackmun, and Brennan (with Justice Marshall joining) wrote opinions concurring in the judgment.

VII case law regarding religious employers because of its persuasiveness on issues in common with federal contractor issues arising under Executive Order 11246.

These recent Supreme Court decisions have addressed the freedoms and anti-discrimination protections that must be afforded religion-exercising organizations and individuals under the U.S. Constitution and federal law. *See, e.g., Masterpiece Cakeshop, Ltd.* v. *Colo. Civil Rights Comm'n,* 138 S. Ct. 1719, 1731 (2018) (government violates the Free Exercise Clause of the First Amendment when its decisions are based on hostility to religion or a religious viewpoint); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012, 2022 (2017) (government violates the Free Exercise Clause of the First Amendment when it conditions a generally available public benefit on an entity's giving up its religious character, unless that condition withstands the strictest scrutiny); *Burwell* v. *Hobby Lobby Stores, Inc.,* 134 S. Ct. 2751, 2775 (2014) (the Religious Freedom Restoration Act applies to federal regulation of the activities of for-profit closely held corporations); *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC,* 565 U.S. 171, 196 (2012) (the ministerial exception, grounded in the Establishment and Free Exercise clauses of the First Amendment, bars an employment-discrimination suit brought on behalf of a teacher against the religious school for which she worked). Although these decisions are not specific to the federal government's regulation of contractors, they have reminded the federal government of its duty to protect religious exercise—and not to impede it. Recent executive orders have done the same. *See* E.O. 13831; E.O. 13798, 82 FR 21675 (May 9, 2017).

Some religious organizations have previously provided feedback to OFCCP that they were reluctant to participate as federal contractors because of uncertainty regarding the scope of the religious exemption contained in section 204(c) of Executive Order 11246 and codified in OFCCP's regulations. This proposal is intended to provide clarity regarding the scope and application of the religious exemption consistent with the legal developments discussed above by proposing definitions of key terms in 41 CFR 60–1.3 and a rule of construction in 41 CFR 60–1.5. Among other changes, this proposal is intended to make clear that the Executive Order 11246 religious exemption covers not just churches but employers that are organized for a religious purpose, hold themselves out to the public as carrying out a religious purpose, and engage in exercise of religion consistent with, and in furtherance of, a religious purpose. It is also intended to make clear that religious employers can condition employment on acceptance of or adherence to religious tenets without sanction by the federal government, provided that they do not discriminate based on other protected bases. In addition, consistent with the administration policy to enforce federal law's robust protections for religious freedom, the proposed rule states that it should be construed to provide the broadest protection of religious exercise permitted by the Constitution and other laws. While only a subset of contractors and would-be contractors may wish to seek this exemption, the Supreme Court, Congress, and the President have each affirmed the importance of protecting religious liberty for those organizations who wish to exercise it.

Section-by-Section Discussion of Proposal

Section 60–1.3 Definitions

OFCCP proposes to add definitions of the following five terms, appearing in alphabetical order, to the list of definitions in 41 CFR 60–1.3: *Exercise of religion; Particular religion; Religion; Religious corporation, association, educational institution, or society;* and *Sincere.* These definitions are interrelated and are therefore discussed below in the order in which they build on one another.

OFCCP proposes defining *Religion* to provide that the term is not limited to religious belief but also includes all aspects of religious observance and practice. The proposed definition is identical to the primary definition of ''religion'' in Title VII: ''The term 'religion' includes all aspects of religious observance and practice, as well as belief. . . .'' 42 U.S.C. 2000e(j). The proposed definition omits the second portion of the Title VII definition, which refers to an employer's accommodation of an employee's religious observance or practice, because that is redundant with OFCCP's existing regulations. OFCCP's regulations at 41 CFR part 60–50, Guidelines on Discrimination Because of Religion or National Origin, contain robust religious protections for employees, including accommodation language substantially the same as that in the portion of the Title VII definition omitted here. *Compare* 42 U.S.C. 2000e(j) *with* 41 CFR 60–50.3. Those provisions continue to govern contractors' obligations to accommodate employees' and potential employees' religious observance and practice.

The definition of *Religion* proposed here has been used by other agencies. It would be identical to the definition used by the Department of Justice in grant regulations implementing section 815(c) of the Justice System Improvement Act of 1979. *See* 28 CFR 42.202(m). The Small Business Administration has used the same definition as well in its grant regulations. *See* 13 CFR 113.2(c).

Building on the proposed definition of *Religion,* OFCCP proposes to define *Particular religion* to clarify that the religious exemption allows religious contractors not only to prefer in employment individuals who share their religion, but also to condition employment on acceptance of or adherence to religious tenets as understood by the employing contractor. This proposed definition flows directly from the broad definition of *Religion,* discussed above, to include all aspects of religious belief, observance, and practice as understood by the employer. It is also consistent with Title VII case law holding that ''the permission to employ persons 'of a particular religion' includes permission to employ only persons whose beliefs and conduct are consistent with the employer's religious precepts.'' *Little* v. *Wuerl,* 929 F.2d 944, 951 (3d Cir. 1991); *see also, e.g., Kennedy* v. *St. Joseph's Ministries, Inc.,* 657 F.3d 189, 194 (4th Cir. 2011) (''Congress intended the explicit exemptions to Title VII to enable religious organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices, whether or not every individual plays a direct role in the organization's 'religious activities.' '' (quoting *Little,* 929 F.2d at 951)); *Hall* v. *Baptist Mem'l Health Care Corp.,* 215 F.3d 618, 624 (6th Cir. 2000) (''The decision to employ individuals 'of a particular religion' under [42 U.S.C.] § 2000e–1(a) and § 2000e–2(e)(2) has been interpreted to include the decision to terminate an employee whose conduct or religious beliefs are inconsistent with those of its employer.'' (citing, inter alia, *Little,* 929 F.2d at 951)); *Killinger* v. *Samford Univ.,* 113 F.3d 196, 200 (11th Cir. 1997) (''[T]he exemption [in 42 U.S.C. 2000e–1(a)] allows religious institutions to employ only persons whose beliefs are consistent with the employer's when the work is connected with carrying out the institution's activities.'').

This approach, which recognizes contractors' exercise of religion, is also consistent with Supreme Court decisions emphasizing that

''condition[ing] the availability of benefits upon a recipient's willingness to surrender his religiously impelled status effectively penalizes the free exercise of his constitutional liberties.'' *Trinity Lutheran,* 137 S. Ct. at 2022 (alterations omitted) (quoting *McDaniel* v. *Paty,* 435 U.S. 618, 626 (1978) (plurality opinion)). These decisions naturally extend to include the right to compete on a level playing field for federal government contracts. *See id.* (government burdens religious exercise when it so conditions ''a benefit or privilege,'' ''eligibility for office,'' ''a gratuitous benefit,'' or the ability ''to compete with secular organizations for a grant'' (quoted sources omitted)). *Accord* sec. 1, E.O. 13831 (the executive branch's policy is to allow ''faith-based and community organizations, to the fullest opportunity permitted by law, to compete on a level playing field for . . . contracts . . . and other Federal funding opportunities'').

OFCCP believes this clarification will assist contractors who have looked for guidance on the religious exemption in OFCCP's past statements. These past statements may have suggested that the exemption permits qualifying organizations only to prefer members of their own faith in their employment practices. *See, e.g.,* OFCCP, Compliance Webinar (Mar. 25, 2015), *https://www.dol.gov/ofccp/LGBT/FTS_TranscriptEO13672_PublicWebinar_ES_QA_508c.pdf* (''This exemption allows religious organizations to hire only members of their own faith.''). OFCCP based such statements on guidance from the Equal Employment Opportunity Commission (EEOC), the agency primarily responsible for enforcing Title VII. *See, e.g.,* EEOC, EEOC Compliance Manual sec. 12–I.C.1 (July 22, 2008) (''Under Title VII, religious organizations are permitted to give employment preference to members of their own religion.''). However, with this rulemaking, OFCCP clarifies that it applies the principles discussed above, permitting qualifying employers to take religion—defined more broadly than simply preferring coreligionists—into account in their employment decisions. The case law makes clear that qualifying employers ''need not enforce an across-the-board policy of hiring only coreligionists.'' *LeBoon* v. *Lancaster Jewish Cmty. Ctr. Ass'n,* 503 F.3d 217, 230 (3d Cir. 2007); *Killinger,* 113 F.3d at 199–200 (''We are also aware of no requirement that a religious educational institution engage in a strict policy of religious discrimination—such as always preferring Baptists in employment decisions—to be entitled to the exemption.'').

As is made clear by the text of section 204(c) of Executive Order 11246 and the corresponding regulation at 41 CFR 60–1.5(a)(5), the religious exemption itself does not exempt or excuse a contractor from complying with other applicable requirements. Although Title VII does not contain a corresponding proviso, courts have generally interpreted the Title VII religious exemption to be similarly precise, so that religious employers are not exempted from Title VII's other provisions protecting employees. *See, e.g., Kennedy,* 657 F.3d at 192; *Rayburn* v. *Gen. Conference of Seventh-Day Adventists,* 772 F.2d 1164, 1166 (4th Cir. 1985); *cf. Hobby Lobby,* 134 S. Ct. at 2783 (rejecting ''the possibility that discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction''); *Bob Jones Univ.* v. *United States,* 461 U.S. 574, 604 (1983) (''the Government has a fundamental, overriding interest in eradicating racial discrimination in education''). Thus, an employer may not, under Title VII or Executive Order 11246, invoke religion to discriminate on other bases protected by law.

Thus, when evaluating allegations of discrimination on bases other than religion against employers that are entitled to the Title VII religious exemption, courts carefully evaluate whether the employment action was permissibly based on religion. The particulars vary. Some courts have invoked the burden-shifting rules of *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973), to determine whether a religious employer's invocation of religion (or a religiously motivated policy) in making an employment decision was genuine or, instead, was merely a pretext for discrimination prohibited under Title VII. *See Cline* v. *Catholic Diocese of Toledo,* 206 F.3d 651 (6th Cir. 2000); *Boyd* v. *Harding Academy of Memphis, Inc.,* 88 F.3d 410 (6th Cir. 1996); *cf. Geary* v. *Visitation of Blessed Virgin Mary Parish Sch.,* 7 F.3d 324 (3d Cir. 1993) (applying *McDonnell Douglas* in assessing religious-exemption defense to claim under the Age Discrimination in Employment Act). At least one other case has noted that ''[o]ne way'' to show discriminatory intent using circumstantial evidence ''is through the burden-shifting framework set out in *McDonnell Douglas,*'' but another way is to ''show enough non-comparison circumstantial evidence to raise a reasonable inference of intentional discrimination.'' *Hamilton* v. *Southland Christian Sch., Inc.,* 680 F.3d 1316, 1320 (11th Cir. 2012).

Other decisions have not used the *McDonnell Douglas* framework, particularly when an inquiry into purported pretext would risk entangling the court in the internal affairs of a religious organization or require a court or jury to assess religious doctrine or the relative weight of religious considerations. *See Geary,* 7 F.3d at 330–31 (discussing cases). Depending on the circumstances, such an inquiry by a court or an agency could impermissibly infringe on the First Amendment rights of the employer.

This arises most prominently in the context of the ministerial exception, a judicially recognized exemption grounded in the First Amendment from employment-discrimination laws for decisions regarding employees who ''minister to the faithful.'' *Hosanna Tabor,* 565 U.S. at 189. The exemption ''is not limited to the head of a religious congregation,'' nor subject to ''a rigid formula for deciding when an employee qualifies as a minister.'' *Id.* at 190. ''The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission.'' *Id.* at 189. The ministerial exception thus bars ''an employment discrimination suit brought on behalf of a minister.'' *Id.* In such a situation, it is dispositive that the employee is a minister; there is no further inquiry into the employer's motive. *See id.* at 706 (''[b]y imposing an unwanted minister, the state infringes the Free Exercise Clause . . . and the Establishment Clause''); *see, e.g., Rayburn,* 772 F.2d at 1169 (''In 'quintessentially religious' matters, the free exercise clause of the First Amendment protects the act of decision rather than a motivation behind it.'' (quoting *Serbian E. Orthodox Diocese for U.S.* of *Am. & Canada* v. *Milivojevich,* 426 U.S. 696, 720 (1976))).

Courts also apply a different framework when an employer makes an employment decision based on religious criteria, yet the employee disputes the religious criteria. In those situations, courts have stated that ''if a religious institution . . . presents convincing evidence that the challenged employment practice resulted from discrimination on the basis of religion, § 702 deprives the EEOC of jurisdiction to investigate further to determine whether the religious discrimination was a pretext for some other form of discrimination.'' *Little,* 929 F.2d at 948 (quoting *EEOC* v. *Miss. Coll.,* 626 F.2d 477, 485 (5th Cir. 1980)). Courts have noted the constitutional dangers of ''choos[ing] between parties' competing

religious visions'' and entangling themselves in deciding whether the employer or the employee has the better reading of doctrine, or which tenets an employee must follow or believe to remain in employment. *Geary,* 7 F.3d at 330; *see Curay-Cramer* v. *Ursuline Acad. of Wilmington, Del., Inc.,* 450 F.3d 130, 141 (3d Cir. 2006) (''While it is true that the plaintiff in *Little* styled her allegation as one of religious discrimination whereas [this plaintiff] alleges gender discrimination, we do not believe the difference is significant in terms of whether serious constitutional questions are raised by applying Title VII. Comparing [plaintiff] to other Ursuline employees who have committed 'offenses' against Catholic doctrine would require us to engage in just the type of analysis specifically foreclosed by *Little.*''); *Little,* 929 F.2d at 949 (''In this case, the inquiry into the employer's religious mission is not only likely, but inevitable, because the specific claim is that the employee's beliefs or practices make her unfit to advance that mission. It is difficult to imagine an area of the employment relationship *less* fit for scrutiny by secular courts.''); *Maguire* v. *Marquette Univ.,* 627 F. Supp. 1499, 1507 (E.D. Wisc. 1986) (''Despite [plaintiff's] protests that she is a Catholic, 'of a particular religion,' the determination of who fits into that category is for religious authorities and not for the government to decide.''), *aff'd in part, vacated in part on other grounds,* 814 F.2d 1213 (7th Cir. 1987).

Finally, there may be other instances where an inquiry by a court or an agency into employment practices otherwise threatens First Amendment rights. *See DeMarco* v. *Holy Cross High Sch.,* 4 F.3d 166, 172 (2d Cir. 1993) (''There may be cases involving lay employees in which the relationship between employee and employer is so pervasively religious that it is impossible to engage in an age-discrimination inquiry without serious risk of offending the Establishment Clause.''). These turn on their individual facts, and OFCCP does not attempt to enumerate such situations here.

With the foundation of those proposed definitions, the next term in the present proposed regulation is *Religious corporation, association, educational institution, or society.* This term is used in Executive Order 11246 section 204(c) and 41 CFR 60–1.5(a)(5), and it is the same term used in the Title VII religious exemption at 42 U.S.C. 2000e–1(a). The proposed definition applies to a corporation, association, educational institution, society, school, college, university, or institution of learning. The words ''school, college, university, or institution of learning'' also appear in 41 CFR 60–1.5(a)(6), the exemption for religious educational organizations. They are included in the proposed definition to make clear that the definition's listing of ''educational institution'' includes schools, colleges, universities, and institutions of learning. Depending on the facts, an educational organization may qualify under the § 60–1.5(a)(5) exemption, the § 60–1.5(a)(6) exemption, both, or neither.

The proposed definition of *Religious corporation, association, educational institution, or society* seeks to clarify which organizations can qualify for the religious exemption. Federal circuit courts have applied a confusing variety of tests for doing so under Title VII. In 2007, the Third Circuit noted:

> Over the years, courts have looked at the following factors: (1) Whether the entity operates for a profit, (2) whether it produces a secular product, (3) whether the entity's articles of incorporation or other pertinent documents state a religious purpose, (4) whether it is owned, affiliated with or financially supported by a formally religious entity such as a church or synagogue, (5) whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees, (6) whether the entity holds itself out to the public as secular or sectarian, (7) whether the entity regularly includes prayer or other forms of worship in its activities, (8) whether it includes religious instruction in its curriculum, to the extent it is an educational institution, and (9) whether its membership is made up by coreligionists.

LeBoon, 503 F.3d at 226 (citing *Killinger,* 113 F.3d 196; *EEOC* v. *Kamehameha Sch./Bishop Estate,* 990 F.2d 458 (9th Cir. 1993); *EEOC* v. *Townley Eng'g & Mfg. Co.,* 859 F.2d 610 (9th Cir. 1988); *Miss. Coll.,* 626 F.2d 477). In contrast, the Ninth Circuit has more recently held that:

> an entity is eligible for the [Title VII] section 2000e–1 exemption, at least, if it is organized for a religious purpose, is engaged primarily in carrying out that religious purpose, holds itself out to the public as an entity for carrying out that religious purpose, and does not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts.

Spencer v. *World Vision, Inc.,* 633 F.3d 723, 724 (9th Cir. 2011) (per curiam).

The *World Vision* court reasoned that an approach like that exemplified in *LeBoon,* in which the court assesses the religiosity of an organization's various characteristics, can lead the court into a ''constitutional minefield.'' *Id.* at 730 (O'Scannlain, J., concurring); *see also id.* at 741 (Kleinfeld, J., concurring) (concurring in this part of Judge O'Scannlain's opinion). When the parties dispute whether a particular practice, position, or purpose has religious meaning, ''[t]he very act of making that determination . . . runs counter to the 'core of the constitutional guarantee against religious establishment.' '' *Id.* at 731 (O'Scannlain, J., concurring) (quoting *New York* v. *Cathedral Acad.,* 434 U.S. 125, 133 (1977)). ''[I]nquiry into . . . religious views . . . is not only unnecessary but also offensive. It is well established . . . that courts should refrain from trolling through a person's or institution's religious beliefs.'' *Id.* (alterations in original) (quoting *Mitchell* v. *Helms,* 530 U.S. 793, 828 (2000) (plurality opinion) (internal quotation marks omitted)).

The *World Vision* court had other reasons for doubting *LeBoon's* inquiries into the depths of religious practice. It noted that courts are ''ill-equipped to determine whether an activity or service is religious or secular in nature.'' *Id.* at 732; *see also id.* at 732 n.8. Favoring institutions with denominational affiliations could lead a court or an agency to discriminate among religions, which could also violate the First Amendment's Establishment Clause. *See id.* at 732 & n.9; *see also id.* at 738 & n.19 (Judge O'Scannlain pointing out that requiring the restriction of membership or benefits to coreligionists as a condition of Title VII exemption could similarly cause inter-religion discrimination that violates the Establishment Clause). And finally, a ''multifactor test,'' like *LeBoon's,* ''does not work well because it is inherently too indeterminate and subjective.'' *Id.* at 741 (Kleinfeld, J., concurring).

Although the *World Vision* majority agreed on those principles, its two judges differed slightly on the test to be used. Judge O'Scannlain put forward a three-part test: That ''a nonprofit entity qualifies for the [Title VII religious] exemption if it establishes that it (1) is organized for a self-identified religious purpose (as evidenced by Articles of Incorporation or similar foundational documents), (2) is engaged in activity consistent with, and in furtherance of, those religious purposes, and (3) holds itself out to the public as religious.'' *Id.* at 734 (O'Scannlain, J., concurring) (footnote omitted). His test drew upon similar formulations by the D.C. Circuit and by then-Judge Breyer on the First Circuit rejecting, due to Establishment Clause concerns, National Labor Relations Board assertions of jurisdiction over religious educational institutions. *See id.* (citing *Univ. of Great Falls* v. *NLRB,* 278 F.3d 1335,

1343 (D.C. Cir. 2002); *Universidad Cent. de Bayamon* v. *NLRB,* 793 F.2d 383, 399–400, 403 (1st Cir. 1985) (en banc) (Breyer, J.)). Judge Kleinfeld would not have restricted the exemption to nonprofit entities but would have included, as an additional factor, that the entity charge only nominal fees for its goods and services. *See id.* at 746–48 (Kleinfeld, J., concurring). *World Vision's* controlling per curiam opinion thus put forward a four-part test: That an entity, to qualify for the religious exemption, must be ''organized for a religious purpose, . . . [be] engaged primarily in carrying out that religious purpose, . . . hold[ ] itself out to the public as an entity for carrying out that religious purpose, and . . . not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts.'' *Id.* at 724 (per curiam).

OFCCP agrees with the *World Vision* court's reasoning that it would be inappropriate and constitutionally suspect for OFCCP to contradict a claim, found to be sincere,[2] that a particular activity or purpose has religious meaning. *See World Vision,* 633 F.3d at 733 (O'Scannlain, J., concurring) (''[W]here there is no dispute that a particular activity or purpose is religious in nature, we may rely on the parties' characterization. In a case such as this, where the matter is hotly contested, however, we should stay our hand and rely on considerations that do not require us to engage in constitutionally precarious inquires.''). Earlier Title VII decisions illustrate the problems of doing so, drawing the government into a balancing of secular and religious characteristics, with no clear indicia of how heavily which characteristics should weigh or how much religiosity or secularity is needed to tip the balance toward one side or the other.

For example, the Third Circuit in *LeBoon* applied a balancing test to decide whether a Jewish community center qualified as a religious corporation, organization, or institution. *See* 503 F.3d at 221. The court noted the center's various religious and secular characteristics, including some that weighed on both sides: For example, the center '' 'espoused Jewish values' although 'the Jewish values it espoused are universal,' '' *id.* at 227 (quoting testimony from the center's corporate designee) (alterations omitted); rabbis from three local synagogues advised the center but were honorary, non-voting members; the center received financial support from a local Jewish federation, but most of its income came from programming services and rentals; several of its ''activities involved observance of the Jewish religious calendar, although these activities did not necessarily involve holy services,'' *id.* at 228; and the center ''kept a kosher kitchen, although non-kosher foods could be brought into the building,'' *id.*

A test that relies on the government—as opposed to the organization itself—identifying whether certain features of an organization, or its character as a whole, are religious or secular may require the comparison of things that may not be comparable, as demonstrated by the decisions above. It may, for example, invite inquiries that are aptly described as ''judging whether a particular line is longer than a particular rock is heavy.'' *Bendix Autolite Corp.* v. *Midwesco Enters., Inc.,* 486 U.S. 888, 897 (1988) (Scalia, J., concurring in the judgment). Further, the Supreme Court has cautioned especially against judging the centrality of religious beliefs and, by extension, the centrality of religion in an organization:

> It is no more appropriate for judges to determine the ''centrality'' of religious beliefs before applying a ''compelling interest'' test in the free exercise field, than it would be for them to determine the ''importance'' of ideas before applying the ''compelling interest'' test in the free speech field. What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is ''central'' to his personal faith?

Emp't Div., Dep't of Human Res. of Ore. v. *Smith,* 494 U.S. 872, 887 (1990), *superseded in other respects by* Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb *et seq.* The Supreme Court continued: ''Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.'' *Id.* As the D.C. Circuit stated in *University of Great Falls,* a test that requires ascertaining an entity's ''substantial religious character'' or lack thereof ''boils down to 'is it *sufficiently* religious?' '' 278 F.3d at 1343. Such inquiries by government entities are highly suspect under the Establishment Clause. *See, e.g., Cathedral Acad.,* 434 U.S. at 133 (''The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment. . . .'').

The competing opinions in *World Vision* also underscore the problem of asking the government to identify the primary purpose of certain organizations as religious or secular. *See* 633 F.3d at 737 (O'Scannlain, J., concurring) (World Vision ''attempts to express its 'Christian witness . . . in holistic ways through . . . ministries of relief, development, advocacy and public awareness.' '') (alterations in original); *id.* at 747 (Kleinfeld, J., concurring) (''the idea [behind World Vision] is not merely foreign aid in poor countries, but what amounts to missionary work by making its service providers exemplars of Christian charity''). *But cf. id.* at 764 (Berzon, J., dissenting) (''World Vision's purpose and daily operations are defined by a wide range of humanitarian aid that is, on its face, secular.''). *Cf. also, e.g., St. Elizabeth Cmty. Hosp.* v. *NLRB,* 708 F.2d 1436, 1441 (9th Cir. 1983) (''St. Elizabeth does not have a substantial religious character. Its primary purpose, like that of any secular hospital, is rather humanitarian, devoted to medical care for the sick.'').

Consequently, in its definition of *Religious corporation, association, educational institution, or society,* OFCCP proposes to adopt the test set out in *World Vision,* with some modifications discussed below. Most important, as explained in *World Vision,* all the factors below are determined with reference to the contractor's own sincerely held view of its religious purposes and the religious meaning (or not) of its practices. *See World Vision,* 633 F.3d at 733 (O'Scannlain, J., concurring).

First, the contractor must be organized for a religious purpose, meaning that it was conceived with a self-identified religious purpose. This need not be the contractor's only purpose. *Cf. Universidad Cent. de Bayamon,* 793 F.2d at 401 (no NLRB jurisdiction when, among other things, an educational institution's mission had ''admittedly religious functions but whose predominant higher education mission is to provide . . . students with a secular education''). A religious purpose can be shown by articles of incorporation or other founding documents, but that is not the only type of evidence that can be used. *See World Vision,* 633 F.3d at 736 (O'Scannlain, J., concurring); *id.* at 745 (Kleinfeld, J., concurring) (noting that some religious entities have ''no corporate apparatus''). And finally, ''the decision whether an organization is 'religious' for purposes of the exemption cannot be based on its conformity to some preconceived notion of what a religious organization should do, but must be measured with reference to the particular religion identified by the organization.'' *Id.* at

[2] The issue of sincerity is discussed later in this preamble.

735–36 (O'Scannlain, J., concurring) (quoting *LeBoon,* 503 F.3d at 226–27) (internal quotation mark omitted).

Second, the contractor must hold itself out to the public as carrying out a religious purpose. Again here, ''religious purpose'' ''must be measured with reference to the particular religion identified by the contractor.'' *Id.* at 736. A contractor can satisfy this requirement in a variety of ways, including by evidence of a religious purpose on its website, publications, advertisements, letterhead, or other public-facing materials, or by affirming a religious purpose in response to inquiries from a member of the public or a government entity.

Third, the contractor must exercise religion consistent with, and in furtherance of, a religious purpose. Here too, ''religious purpose'' means religious as ''measured with reference to the particular religion identified by the contractor.'' *Id.* The test here is similar to that in Judge O'Scannlain's concurring opinion in *World Vision* rather than that in the per curiam opinion. *Cf. id.* at 734.

OFCCP proposes this approach because it offers simpler administration for OFCCP and clearer notice to contractors. While OFCCP generally follows Title VII case law, the agency is an enforcement body, not a court, and it has authority over federal contractors specifically, rather than employers generally. Those differences counsel in favor of OFCCP's proposed revision to this aspect of the *World Vision* test.

OFCCP's staff can easily and consistently apply the test as proposed. As discussed earlier, an inquiry into whether an entity is engaged ''primarily'' in religious activity invites the balancing of things that cannot be balanced in any consistent way. How much expressly religious instruction must a school require of its students to be primarily engaged in a religious purpose? *See Kamehameha,* 990 F.2d at 463–64. How much funding must an organization receive from an ecclesiastical organization to be primarily engaged in a religious purpose? *See Killinger,* 113 F.3d at 199. What percentage of an organization's controlling body or employees must be made up of a certain religion to be primarily engaged in a religious purpose? *See, e.g., Siegel* v. *Truett-McConnell Coll., Inc.,* 13 F. Supp. 2d 1335, 1341 (N.D. Ga. 1994).[3] These and similarly intractable questions have arisen repeatedly in cases involving the religious exemption. And those questions remain intractable despite courts' having the benefit of full adversarial presentation and development of the record, two conditions not present at the beginning of OFCCP reviews. Avoiding such difficult-to-draw lines would better promote consistency in OFCCP's administration and give field staff better guidance.

Likewise, the test as proposed would be clearer for contractors. OFCCP's power to regulate any private entity springs entirely from that entity's contracting with the federal government. *See* Sec. 201–202, E.O. 11246; 29 U.S.C. 793 (a)–(b); 38 U.S.C. 4212(a)(1)–(2); *see also* 48 CFR 52.222–26, –35, –36. Both contractors and the government have an interest in ensuring that the terms of their agreements are as clear as possible. As the discussion earlier makes apparent, a ''primarily engaged'' inquiry lacks the clarity that ought to prevail in contractual relations—organizations should understand the obligations they will take on before entering into a binding agreement with the government. *See generally Fed. Crop Ins. Co.* v. *Merill,* 332 U.S. 380 (1947) (contractors are bound to obligations imposed by law even when government agents, acting beyond their authority, say otherwise); *cf. Pennhurst State Sch. & Hosp.* v. *Halderman,* 451 U.S. 1, 17 (1981) (''There can, of course, be no knowing acceptance if a State is unaware of the conditions [on federal funds] or is unable to ascertain what is expected of it.''). This need for clear regulation is especially acute given that the contractual conditions enforced by OFCCP are animated in part by the government's economic interest in the efficient fulfillment of its contracts, for which clarity is critical. *See Contractors Ass'n of E. Pa.* v. *Sec'y of Labor,* 442 F.2d 159, 171 (3d Cir. 1971) (antidiscrimination requirements in federal procurement and federally assisted construction contracts go beyond ''merely . . . impos[ing] [the President's] notions of desirable social legislation''; they further the government's ''financial and completion interests''); *cf. UAW-Labor Emp't & Training Corp.* v. *Chao,* 325 F.3d 360, 366–67 (D.C. Cir. 2003); *AFL–CIO* v. *Kahn,* 618 F.2d 784, 792 (D.C. Cir. 1979).

For these same reasons of contractual clarity and efficiency of administration, OFCCP's proposed definition extends no further than the three components listed therein, which, if satisfied, entitle an organization to the religious exemption. They are intended to be stand-alone components and not factors guiding an ultimate inquiry into whether an organization is ''primarily religious'' or secular as a whole.

The regulatory text proposed here uses the phrase ''engages in exercise of religion'' rather than Judge O'Scannlain's phrase, ''engages in activity.'' *See World Vision,* 633 F.3d at 734 (O'Scannlain, J., concurring) (''engaged in activity consistent with, and in furtherance of, those religious purposes''). This change, along with accompanying definitions described next, has been made for clarity, since OFCCP is proposing regulatory text in the form of a definition rather than a judicial opinion-style narrative in which terms like ''activity'' can be explicated at length. No change in substantive meaning is intended. The phrasing proposed here, along with the other definitions, makes clear that the activities furthering a religious purpose must be themselves of the kind that the contractor itself views as religious. OFCCP believes this formulation gives due regard to religious contractors' sincere religious exercise by recognizing that such organizations ascribe deep religious significance to their humanitarian, healing, charitable, and educational work. With that said, OFCCP does not see a scenario in which an entity's single religiously motivated employment action, standing alone, would be sufficient to satisfy this element of the definition, if that were the only religiously motivated action the entity could identify.

OFCCP does not propose to adopt the fourth factor set out in *World Vision,* that the entity seeking exemption ''not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts.'' *Id.* at 724 (per curiam). OFCCP believes that the adoption of this factor could yield unexpected results and that it is difficult to square with other case law. First, there are many religious entities that engage ''primarily or substantially in the exchange of goods or services for

[3] *See Siegel,* 13 F. Supp. 2d at 1341 (''The religious affiliation of full-time faculty on the main campus were listed as follows: Baptist 23, Episcopalian 4, Methodist 4, Catholic 2, Congregational 1, and Evangelical Free Church 1. Adjunct faculty on the main campus were listed as follows: Baptist 11, Christians 5, Lutheran 1, Methodist 4. Thus, 66% of full-time faculty and 52% of part-time faculty on the main campus, for the period 1988–1993, were Baptist; 100% were Christians. The faculty at the satellite campuses was identified as part-time and the religious breakdown was listed as follows: Baptist 179, Methodist 73, Episcopal 26, Presbyterian 52, Unitarian 6, Pentecostal 2, Catholic 27, Independent 1, Christian 7, United Church of Christ 2, Jehovah''s Witness 1, Church of the Nazarene 1, Church Member 1, Assembly of God 6, Seventh Day Adventist 3, Non-Denominational 3, Unity Christian 1, Evangelical Free Church 1, Protestant 4, Congregational 1, Church of God 1, Church of Christ 3, Anglican 1, Lutheran 4, and Mormon 1.'').

money beyond nominal amounts.'' For instance, religious entities may operate discount retail stores or otherwise engage in the marketplace.[4] Religiously oriented hospitals, senior-living facilities, and hospices may also engage in substantial and frequent financial exchanges.[5] A test that makes financial exchange a dispositive factor may sweep more broadly than Executive Order 11246 intended, especially when considering that Executive Order 11246—and its religious exemption—pertain to government contracting, an economic activity in which most participants are for-profit entities.[6]

Second, and perhaps for this reason, this factor has not been determinative for other courts. An entity's for-profit or nonprofit status, or the volume or amount of its financial transactions, may be a factor, but not necessarily a dispositive one, under the *LeBoon* test. *See* 503 F.3d at 227 (''[N]ot all factors will be relevant in all cases, and the weight given each factor may vary from case to case.''). Likewise, in an earlier Ninth Circuit decision involving a claim for religious exemption brought by a for-profit organization, the court did not hold that the organization's for-profit status alone disqualified it from exemption. *See Townley,* 859 F.2d at 619.[7]

Although the Supreme Court considered and upheld the Title VII religious exemption against Establishment Clause challenge as applied ''to the secular nonprofit activities of religious organizations,'' *Amos,* 483 U.S. at 330, the Supreme Court's more recent decision in *Hobby Lobby* counsels against a stark distinction between for-profit and nonprofit corporations in this context. The Supreme Court wrote, ''No conceivable definition of the term ['person'] includes natural persons and nonprofit corporations, but not for-profit corporations.'' *Hobby Lobby,* 134 S. Ct. at 2769. *Hobby Lobby* forcefully rejected the argument that only nonprofit corporations can exercise religion. *See id.* at 2769–75. In *Hobby Lobby,* the Supreme Court observed that furthering the religious freedom of corporations, whether for-profit or nonprofit, furthers individual religious freedom. *See id.* at 2769. The Supreme Court found no reason to distinguish between for-profit sole proprietorships—which had brought Free Exercise claims before the Supreme Court in earlier cases—and for-profit closely held corporations. *See id.* at 2769–70. And the Supreme Court noted that every U.S. jurisdiction permits corporations to be formed ''for any lawful purpose or business,'' *id.* at 2771 (quoted source omitted), including a religious one: ''For-profit corporations, with ownership approval, support a wide variety of charitable causes, and it is not at all uncommon for such corporations to further humanitarian and other altruistic objectives. . . . If for-profit corporations may pursue such worthy objectives, there is no apparent reason why they may not further religious objectives as well.'' *Id.* An argument to the contrary ''flies in the face of modern corporate law.'' *Id.* at 2770. *Hobby Lobby* answered the question whether a for-profit closely held corporation can exercise religion, and its affirmative answer supports OFCCP's proposal not to disqualify organizations from the religious exemption on the basis of their for-profit or nonprofit status.[8] However, for the same reasons discussed by the Supreme Court in *Hobby Lobby* with respect to the application of RFRA to for-profit entities, OFCCP does not anticipate that large, publicly held corporations would seek exemption or fall within the proposed definition. *See id.* at 2774 (''the idea that unrelated shareholders—including institutional investors with their own set of stakeholders—would agree to run a corporation under the same religious beliefs seems improbable'').

With the definition of *Religious corporation, association, educational institution, or society* set forth in this proposal, OFCCP intends to clarify the scope of the exemption and to ''rely on considerations that do not require [it] to engage in constitutionally precarious inquiries.'' *World Vision,* 633 F.3d at 733 (O'Scannlain, J., concurring). Accordingly, the proposed definition also identifies a number of features that are not required for OFCCP to determine that a contractor is religious. With this proposed definition, OFCCP intends to identify contractors that qualify for the exemption without engaging in an analysis that is inherently subjective and indeterminate, outside its competence, susceptible to discrimination among religions, or prone to entanglement with religious activity. *See, e.g., Mitchell,* 530 U.S. at 828 (plurality opinion); *Colorado Christian Univ.,* 534 F.3d at 1261–62; *Univ. of Great Falls,* 278 F.3d at 1342–43.

OFCCP proposes to define *Exercise of religion*—which appears in the proposed definition of *Religious corporation, association, educational institution, or society* just discussed—as the term is defined for purposes of RFRA. RFRA, in 42 U.S.C. 2000bb–2(4), defines ''exercise of religion'' to mean ''religious exercise'' as defined in the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. 2000cc–5(7). RLUIPA, in turn, defines ''religious exercise'' as including ''any exercise of religion, whether or not compelled by, or central to, a system of religious belief.'' This definition is well-established and prevents the kinds of problematic inquiries into the ''centrality'' of a religious practice highlighted above.

The proposed definition of *Exercise of religion* also clarifies that the touchstone for religious exercise is sincerity, and therefore an exercise of religion must only be sincere. As the Supreme Court has repeatedly counseled, ''religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.'' *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah,* 508 U.S. 520, 531 (1993) (quoting *Thomas* v. *Review Bd. of Ind. Emp't Sec. Div.,* 450 U.S. 707, 714 (1981)) (internal quotation marks omitted); *see also, e.g., United States* v. *Ballard,* 322 U.S. 78, 86 (1944) (''[People] may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.''). To merit protection, religious beliefs must simply be ''sincerely held.'' *E.g., Frazee* v. *Ill. Dept. of Emp't Sec.,* 489 U.S. 829, 834 (1989); *United States* v.

[4] *See* Brian J. Grim and Melissa E. Grim, ''The Socio-economic Contribution of Religion to American Society: An Empirical Analysis,'' Interdisciplinary Journal of Research on Religion, vol. 12 (2016), article 3, pp. 10, 24, *http://www.religjournal.com/pdf/ijrr12003.pdf.*

[5] *See id.* at 7.

[6] *See* General Services Administration, System for Award Management, Advanced Search—Entity (listing 356,265 active for-profit entities and 85,484 nonprofit and/or other-not-for-profit entities), sam.gov/SAM/pages/public/searchRecords/advancedEMRSearch.jsf (last accessed Apr. 17, 2019).

[7] Judge O'Scannlain's proposed test in *World Vision* included the entity's nonprofit status as an ''initial consideration'' because ''the fact that that an entity is structured as a nonprofit provides strong evidence that its purpose is purely nonpecuniary.'' 633 F.3d at 734–35 (O'Scannlain, J., concurring). However, Judge Kleinfeld believed that there was ''not much congruence between nonprofit status and the free exercise of religion, or any eleemosynary purpose.'' *Id.* at 745 (Kleinfeld, J. concurring). *World Vision* was issued before the Supreme Court's decision in *Hobby Lobby,* which is discussed next.

[8] The *Hobby Lobby* Court elsewhere noted the assertion of the Department of Health and Human Services (HHS) that ''statutes like Title VII . . . expressly exempt churches and other nonprofit religious institutions but not for-profit corporations.'' 134 S. Ct. at 2773. The Court did not address whether HHS's characterization (which itself relied in part on *World Vision*) was correct. The Court simply stated that ''[i]f Title VII and similar laws show anything, it is that Congress speaks with specificity when it intends a religious accommodation not to extend to for-profit corporations.'' *Id.* at 2773–74.

Seeger, 380 U.S. 163, 185 (1965). Courts have appropriately relied on the ''sincerely held'' standard when evaluating religious discrimination claims in the Title VII context. *See, e.g., Davis* v. *Fort Bend Cnty.,* 765 F.3d 480, 485 (5th Cir. 2014), *on remand,* No. 4:12–CV–131, 2016 WL 4479527 (S.D. Tex. Aug. 24, 2016), *rev'd,* 893 F.3d 300 (5th Cir. 2018), *cert. granted,* No. 18–525 (U.S. Jan. 11, 2019); *Philbrook* v. *Ansonia Bd. of Educ.,* 757 F.2d 476, 481–82 (2d Cir. 1985), *aff'd on other grounds,* 479 U.S. 60 (1986); *Redmond* v. *GAF Corp.,* 574 F.2d 897, 901 n.12 (7th Cir. 1978). In such cases, a court must ''vigilantly separate the issue of sincerity from the factfinder's perception of the religious nature of the [employee's] beliefs.'' *EEOC* v. *Union Independiente de la Autoridad de Acueductos y Alcantarillados,* 279 F.3d 49, 57 (1st Cir. 2002) (alteration in original) (quoting *Patrick* v. *LeFevre,* 745 F.2d 153, 157 (2d Cir. 1984)) (internal quotation mark omitted).

These principles are incorporated in the proposed definition of *Sincere.* In line with court precedent and OFCCP's principles, the critical inquiry for OFCCP is whether a particular employment decision was in fact a sincere exercise of religion. OFCCP, like courts, ''merely asks whether a sincerely held religious belief actually motivated the institution's actions.'' *Geary,* 7 F.3d at 330. The religious organization's burden ''to explain is considerably lighter than in a non-religious employer case,'' since the organization, ''at most, is called upon to explain the application of its own doctrines.'' *Id.* ''Such an explanation is no more onerous than is the initial burden of any institution in any First Amendment litigation to advance and explain a sincerely held religious belief as the basis of a defense or claim.'' *Id.; see Seeger,* 380 U.S. at 185 (whether a belief is ''truly held'' is ''a question of fact''). The sincerity of religious exercise is often undisputed or stipulated. *See, e.g., Hobby Lobby,* 134 S. Ct. at 2774 (''The companies in the case before us are closely held corporations, each owned and controlled by a single family, and no one has disputed the sincerity of their religious beliefs.''); *Holt* v. *Hobbs,* 135 S. Ct. 853, 862 (2015) (''Here, the religious exercise at issue is the growing of a beard, which petitioner believes is a dictate of his religious faith, and the Department does not dispute the sincerity of petitioner's belief.'').

In assessing sincerity, OFCCP takes into account all relevant facts, including whether the contractor had a preexisting basis for its employment policy and whether the policy has been applied consistently to comparable persons, although absolute uniformity is not required. *See Kennedy,* 657 F.3d at 194 (noting that the Title VII religious exemption permits religious organizations to ''consider some attempt at compromise''); *LeBoon,* 503 F.3d at 229 (''religious organizations need not adhere absolutely to the strictest tenets of their faiths to qualify for Section 702 protection''); *see also Killinger,* 113 F.3d at 199–200. OFCCP will also evaluate any factors that indicate an insincere sham, such as acting ''in a manner inconsistent with that belief'' or ''evidence that the adherent materially gains by fraudulently hiding secular interests behind a veil of religious doctrine.'' *Philbrook,* 757 F.2d at 482 (quoting *Int'l Soc'y for Krishna Consciousness, Inc.* v. *Barber,* 650 F.2d 430, 441 (2d Cir. 1981)) (internal quotation mark omitted); *cf., e.g., Hobby Lobby,* 134 S. Ct. at 2774 n.28 (''To qualify for RFRA's protection, an asserted belief must be 'sincere'; a corporation's pretextual assertion of a religious belief in order to obtain an exemption for financial reasons would fail.''); *United States* v. *Quaintance,* 608 F.3d 717, 724 (10th Cir. 2010) (Gorsuch, J.) (''the record contains additional, overwhelming contrary evidence that the [defendants] were running a commercial marijuana business with a religious front'').

OFCCP likewise acknowledges the constitutional and prudential limitations on its inquiry that may come into play when religious matters are involved. OFCCP respects and will apply the ministerial exception. OFCCP will not compare religious doctrines or practices in evaluating sincerity. *See, e.g., Curay-Cramer,* 450 F.3d at 139 (comparing ''the relative severity of [religious] offenses . . . would violate the First Amendment''); *Hall,* 215 F.3d at 626 (''the First Amendment does not permit federal courts to dictate to religious institutions how to carry out their religious missions or how to enforce their religious practices''). Nor will OFCCP require contractors to adhere to strict, uniform procedures to demonstrate sincerity. *See Kennedy,* 657 F.3d at 194; *LeBoon,* 503 F.3d at 229. And where ''it is impossible to avoid inquiry into a religious employer's religious mission or the plausibility of its religious justification for an employment decision,'' then OFCCP will apply the Executive Order 11246 religious exemption. *Curay-Cramer,* 450 F.3d at 141.

Finally, OFCCP proposes to apply a but-for standard of causation when evaluating claims of discrimination by religious organizations based on protected characteristics other than religion.[9] Specifically, where a contractor that is entitled to the religious exemption claims that its challenged employment action was based on religion, OFCCP will find a violation of Executive Order 11246 only if it can prove by a preponderance of the evidence that a protected characteristic other than religion was a but-for cause of the adverse action. *See Univ. of Texas Sw. Med. Ctr.* v. *Nassar,* 570 U.S. 338, 362–63 (2013); *Gross* v. *FBL Fin. Servs., Inc.,* 557 U.S. 167, 180 (2009). OFCCP believes this approach is necessary in the context in which a religious organization, acting on a sincerely held belief, takes adverse action against an employee on the basis of the employee's religion.[10]

Section 60–1.5 Exemptions

This rule proposes to add paragraph (e) to 41 CFR 60–1.5 to establish a rule of construction for subpart A of 41 CFR part 60–1 that provides for the broadest protection of religious exercise permitted by the Constitution and laws including RFRA. This rule of construction is adapted from RLUIPA, 42 U.S.C. 2000cc–3(g). Significantly, RFRA applies to all government conduct, not just to legislation or regulation. 42 U.S.C. 2000bb–1. The proposed paragraph (e) is clarifying, since the Constitution and federal law, including RFRA, already bind OFCCP.

Regulatory Procedures

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of Executive Order 12866 and OMB review. Section 3(f) of Executive Order

[9] OFCCP requests comment on whether this causation standard should be included in any final regulatory text.

[10] OFCCP recognizes that in prior notice-and-comment rulemaking implementing E.O. 13665 (which amended E.O. 11246 to include pay transparency nondiscrimination), OFCCP rejected comments stating that a but-for causation standard was required; OFCCP adopted the motivating factor framework as expressed in the Title VII post-1991 Civil Rights Act for analyzing causation. *See* 80 FR 54934, 54944–46 (Sept. 11, 2015). Where a religious organization takes adverse action on the basis of an employee's religion, however, OFCCP believes that application of the motivating factor framework could require OFCCP to enter the Constitutionally-suspect minefield of having to evaluate the nature of a sincerely held belief, which could result in the inappropriate encroachment upon the organization's religious integrity. *See, e.g., World Vision,* 633 F.3d at 733 (O'Scannlain, J., concurring).

12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

This proposed rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. The Office of Management and Budget has reviewed the proposed rule. The designation, under Executive Order 13771, of any finalization of this proposed rule will be informed by feedback received during the public comment period.

The Need for the Regulation

The proposed regulatory changes are needed to provide clarity regarding the scope and application of the Executive Order 11246 religious exemption consistent with recent legal developments. The proposed rule is designed to clarify the requirements of the religious exemption, thus giving contractors and potential contractors better information and more predictability for ordering their affairs.

Discussion of Impacts

In this section, the Department presents a summary of the costs associated with the new definitions proposed in § 60–1.3 and the new rule of construction proposed in § 60–1.5. The Department determined that there are approximately 420,000 entities registered in the General Services Administration's System for Award Management (SAM) database.[11] Entities registered in the SAM database consist of contractor firms, and other entities such as state and local governments and other organizations that are interested in federal contracting opportunities, and other forms of federal financial assistance. The total number of entities in the SAM database fluctuates and is posted on a monthly basis. The current database includes approximately 420,000 entities. Thus, the Department determines that 420,000 entities are a reasonable representation of the number of entities that may or may not be affected by the proposed rule.[12] This SAM number, however, likely results in an overestimation for two reasons: The system captures firms that do not meet the jurisdictional dollar thresholds for the three laws that OFCCP enforces, and it captures contractor firms for work performed outside the United States by individuals hired outside the United States, over which OFCCP does not have authority. On the other hand, there is at least one reason to believe that the data may result in an underestimation because SAM data does not include all subcontractors.[13]

The Department estimated the hourly compensation of the employees who would likely review the rule. The Department assumes that a Human Resource Manager (SOC 11–3121) would review the rule. The mean hourly wage of Human Resource Managers is $59.38.[14] The Department adjusted this wage rate to reflect fringe benefits such as health insurance and retirement benefits, as well as overhead costs such as rent, utilities, and office equipment. The Department used a fringe benefits rate of 46 percent[15] and an overhead rate of 17 percent,[16] resulting in a fully loaded hourly compensation rate for Human Resources Managers of $96.79 ($59.38 + ($59.38 × 46%) + ($59.38 × 17%)).

Cost of Regulatory Familiarization

The Department acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for a new information-collection requirement the estimated time it will take for contractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish compliance assistance materials, such as fact sheets and answers to frequently asked questions. OFCCP will also host webinars for interested persons that describe the new regulations and conduct listening sessions to identify any specific challenges contractors believe they face, or may face, when complying with the new regulations. The Department notes that such informal compliance guidance is not binding.

The Department believes that human resource managers at each contractor firm would be the employees responsible for understanding the new regulations. Therefore, the Department estimates that it will take a minimum of one-half hour for a human resource professional at each contractor firm to read the rule, read the compliance assistance materials provided by OFCCP, or participate in an OFCCP webinar to learn the new requirements.[17] Consequently, the estimated burden for rule familiarization would be 210,000 hours (420,000 contractor firms × ½ hour). The Department calculates the total estimated cost of rule familiarization as $20,325,900 (210,000 hours × $96.79/hour) in the first year, which amounts to a 10-year annualized cost of $2,313,413 at a discount rate of 3 percent (which is $5.51 per contractor firm) or $2,704,627 at a discount rate of 7 percent (which is $6.44 per contractor firm). The Department seeks public comments regarding the estimated number of firms that would review this rule, the estimated time to review the

[11] U.S. General Services Administration, System for Award Management, data released in monthly files, available at *https://www.sam.gov.* The SAM database is an estimate with the most recent download of data occurring March 2019.

[12] While the proposed rule may result in more religious corporations, associations, educational institutions or societies entering into federal contracting or subcontracting, there is no way to estimate the volume of increase.

[13] However, this underestimation may be partially offset because of the overlap among contractors and subcontractors; a firm may have a subcontract on some activities but have a contract on others and thus in fact be included in the SAM data.

[14] BLS, Occupational Employment Statistics, Occupational Employment and Wages, May 2017, *https://www.bls.gov/oes/current/oes_nat.htm.*

[15] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* Wages and salaries averaged $24.26 per hour worked in 2017, while benefit costs averaged $11.26, which is a benefits rate of 46%.

[16] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program'' (June 10, 2002), *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[17] The Department believes that contractor firms that may be potentially affected by the rule may take more time to review the proposed rule, while contractor firms that may not be affected may take less time, so the one half hour reflects an estimated average for all contractor firms.

rule, and whether human resource managers would be the most likely staff member to review the rule.

TABLE 1—REGULATORY FAMILIARIZATION COSTS

Total number of contractors	420,000.
Time to review rule	30 minutes.
Human resources manager fully loaded hourly compensation	$96.79.
Regulatory familiarization cost	$20,325,900.
Annualized cost with 3% discounting	$2,313,413.
Annualized cost per contractor with 3% discounting	$5.51.
Annualized cost with 7% discounting	$2,704,627.
Annualized cost per contractor with 7% discounting	$6.44.

The proposed rule does not include any additional costs because it adds no new requirements. The proposed definitions in § 60–1.3 (*Exercise of religion; Particular religion; Religion; Religious corporation, association, educational institution, or society;* and *Sincere*) simply clarify the scope and application of Executive Order 11246's religious exemption. The proposed rule of construction in § 60–1.5(e) likewise clarifies the application of Executive Order 11246 and affirms legal requirements that already bind OFCCP.

The total first year cost of the regulation is estimated at $20,325,900. Below, in Table 2, is a summary of the total quantifiable costs.

TABLE 2—QUANTIFIABLE COSTS

[Regulatory familiarization costs]

First-Year Costs	$24,197,500	
	Disc Rate = 3%	Disc Rate = 7%
10-Year Annualized Costs	$2,313,413	$2,704,627

Cost Savings

The Department expects that contractors impacted by the rule will experience cost savings. Specifically, the clarity provided in the new definitions and the interpretation provided will reduce the risk of non-compliance to contractors and the potential costs of litigation such findings of non-compliance with OFCCP's requirements might impose.

Benefits

Executive Order 13563 recognizes that some rules have benefits that are difficult to quantify or monetize but are nevertheless important, and states that agencies may consider such benefits. Those benefits include equity, fairness, and religious freedom. This proposed rule improves equity, fairness, and religious freedom by giving contractors clear guidance on the scope and application of the religious exemption to Executive Order 11246.

If the proposed rule increases clarity for federal contractors, this impact most likely yields a benefit to taxpayers (if contractor fees decrease because they do not need to engage third-party representatives to interpret OFCCP's requirements). In addition, by increasing clarity for both contractors and for OFCCP enforcement, the proposed rule may reduce the number and costs of enforcement proceedings by making it clearer to both sides at the outset what is required by the regulation. This would also most likely represent a benefit to taxpayers (since fewer resources would be spent in OFCCP administrative litigation and appeals).

The Department expects that the number of new contractors may increase by religious entities' being more willing to contract with the government in reliance on this clarified religious exemption and seeks comment on the costs, benefits, and distributional impacts on contractors and their employees.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' Public Law 96–354. The RFA requires agencies to consider the impact of a proposed regulation on a wide range of small entities, including small businesses, nonprofit organizations, and small governmental jurisdictions.

Agencies must review whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the rule would, then the agency must prepare a regulatory flexibility analysis as described in the RFA. *See id.*

However, if the agency determines that the rule would not be expected to have a significant economic impact on a substantial number of small entities, then the head of the agency may so certify and the RFA does not require a regulatory flexibility analysis. *See* 5 U.S.C. 605. The certification must provide the factual basis for this determination. The Department does not expect this rule to have a significant economic impact on a substantial number of small entities. The Department does not believe the proposed rule has any recurring costs. The regulatory familiarization cost discounted at a 7 percent rate of $45.23 per contractor or $6.44 annualized is a *de minimis* cost.

The Department must determine the compliance costs of this proposed rule on small contractor firms, and whether these costs will be significant for a substantial number of small contractor firms (*i.e.,* small firms that enter into contracts with the federal government). If the estimated compliance costs for affected small contractor firms are less

than 3 percent of small contractor firms' revenues, the Department considers it appropriate to conclude that this proposed rule will not have a significant economic impact on small contractor firms.

A threshold of 3 percent of revenues has been used in prior rulemakings for the definition of significant economic impact. *See, e.g.,* 79 FR 60634 (October 7, 2014, Establishing a Minimum Wage for Contractors) and 81 FR 39108 (June 15, 2016, Discrimination on the Basis of Sex). This threshold is also consistent with that sometimes used by other agencies. *See, e.g.,* 79 FR 27106 (May 12, 2014, Department of Health and Human Services rule stating that under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than 3 percent annually are not economically significant). The Department believes that its use of a 3 percent of revenues significance criterion is appropriate.

A standard definition of ''substantial'' impact has not been established; however, the EPA provided a determination chart to decide whether a substantial impact exists. If the percentage of all small entities subject to the rule that are experiencing a given economic impact (in this case 3 percent of revenue or greater) is greater than or equal to 15 percent of all entities within that industry, then the economic impact should be considered substantial. The Department has used a threshold of 15 percent of small entities in prior rulemakings for the definition of substantial number of small entities. *See, e.g.,* 79 FR 60633 (October 7, 2014, Establishing a Minimum Wage for Contractors). According to the Small Business Administration's (SBA's) Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, the determination of what constitutes a substantial number of small entities is open to interpretation, and is primarily dependent on the size of the industry.[18] Analysts should determine both the total number and percentage of regulated small entities experiencing significant economic impacts when determining whether a substantial number of small entities may be significantly affected.[19]

To analyze the proposed rule's impact on small contractor firms, the Department used as data sources the SBA's Table of Small Business Size Standards[20] and the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB).[21] Since federal contractors are not limited to specific industries, the Department assessed the impact of this proposed rule across 19 industrial classifications. Because data limitations do not allow the Department to determine which of the small firms within these industries are federal contractors, the Department assumes that these small firms are not significantly different from the small federal contractors that will be directly affected by the proposed rule.

The Department used the following steps to estimate the cost of the proposed rule per small contractor firm as measured by a percentage of total annual receipts. First, the Department used Census SUSB data that disaggregates industry information by firm size in order to perform a robust analysis of the impact on small contractor firms. The Department applied the SBA small-business size standards to the SUSB data to determine the number of small firms in the affected industries. Then the Department used receipts data from the SUSB to calculate the cost per firm as a percentage of total receipts by dividing the estimated first year cost and the annualized cost per firm discounted at a 7 percent rate by the average annual receipts per firm. The methodology and results of two industries (construction and management of companies and enterprises) are presented in Tables 3 and 4.

In sum, the increased first year cost and annualized cost of compliance resulting from the proposed rule are *de minimis* relative to the revenue at small contractor firms no matter their size. All of the industries had a first year cost and annualized cost per firm as a percentage of receipts of less than 3 percent. For instance, the first year cost for the construction industry is estimated to range from 0.00 percent of revenue for firms that have average annual receipts of approximately $36 million to 0.09 percent of revenue for firms that have average annual revenue receipts under $100,000. Likewise, the annualized cost for the construction industry is estimated to range from 0.00 percent of revenue for firms that have average annual receipts of approximately $36 million to 0.01 percent of revenue for firms that have average annual revenue receipts of under $100,000. Management of companies and enterprises is the industry with the highest relative first year costs, with a range of 0.00 percent for firms that have average annual receipts of approximately $2 million to 0.15 percent for firms that have average annual receipts of under $31,000. With respect to the annualized costs for the management of companies and enterprises industry, the impact as a percentage of revenue ranges from 0.00 percent for firms that have average annual receipts of approximately $2 million to 0.02 percent for firms that have average annual receipts of under $31,000. Therefore, the first year and annualized burdens as a percentage of the smallest employer's revenue would be far less than 1 percent. Accordingly, OFCCP certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

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[18] Small Business Administration, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act *(August 2017), https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[19] *Final Guidance for EPA Rulewriters: Regulatory Flexibility Act (November 2006),* section 2.7.2, *https://www.epa.gov/sites/production/files/2015-06/documents/guidance-regflexact.pdf.*

[20] *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[21] *https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.*

Table 3. Cost per Small Firm in the Construction Industry

Small Business Size Standard: $15 million – $36.5 million

	Number of Firms	Total Number of Employees	Annual Receipts	Average Receipts per Firm[1]	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts[2]	Annuallized Cost per Firm with 7% Discounting	Annual Cost per Firm as Percent of Receipts[3]
Firms with sales/receipts/revenue below $100,000	119,538	N/A	$6,116,019,000	$51,164	$45.23	0.09%	$6.44	0.01%
Firms with sales/receipts/revenue of $100,000 to $499,999	262,870	569,763	$67,195,728,000	$255,623	$45.23	0.02%	$6.44	0.00%
Firms with sales/receipts/revenue of $500,000 to $999,999	100,006	466,370	$70,808,134,000	$708,039	$45.23	0.01%	$6.44	0.00%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	85,343	742,370	$133,337,229,000	$1,562,369	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	35,670	585,723	$123,598,328,000	$3,465,050	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	12,306	327,911	$74,430,329,000	$6,048,296	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $7,500,000 to $9,999,999	6,179	214,777	$52,933,597,000	$8,566,693	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	6,752	299,412	$80,939,071,000	$11,987,422	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	3,272	190,075	$55,527,769,000	$16,970,590	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	2,002	136,366	$43,498,052,000	$21,727,299	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	1,365	107,700	$36,048,227,000	$26,408,958	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	909	80,081	$28,368,318,000	$31,208,271	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	638	64,770	$22,506,667,000	$35,276,908	$45.23	0.00%	$6.44	0.00%

N/A = not available, not disclosed

[1] In the case of construction firms with receipts below $100,000, the average receipts per firm ($51,164) was derived by dividing the total annual receipts ($6,116,019,000) by the number of firms (119,538).

[2] In the case of construction firms with receipts below $100,000, the first year cost per firm as a percent of receipts (0.09 percent) was derived by dividing the first year cost per firm ($45.23) by the average receipts per firm ($51,164).

3 In the case of construction firms with receipts below $100,000, the annualized cost per firm as a percent of receipts (0.01 percent) was derived by dividing the annualized cost per firm ($6.44) by the average receipts per firm ($51,164).

Table 4. Cost per Small Firm in the Management of Companies and Enterprises Industry								
Small Business Size Standard: $20.5 million								
	Number of Firms	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annualized Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	1,107	7,938	$33,849,000	$30,577	$45.23	0.15%	$6.44	0.02%
Firms with sales/receipts/revenue of $100,000 to $499,999	1,216	4,631	$251,252,000	$206,622	$45.23	0.02%	$6.44	0.00%
Firms with sales/receipts/revenue of $500,000 to $999,999	743	5,764	$285,686,000	$384,503	$45.23	0.01%	$6.44	0.00%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	1,668	17,384	$783,830,000	$469,922	$45.23	0.01%	$6.44	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	2,016	26,218	$1,395,007,000	$691,968	$45.23	0.01%	$6.44	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,602	26,210	$1,567,547,000	$978,494	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $7,500,000 to $9,999,999	1,229	22,064	$1,528,733,000	$1,243,884	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,969	42,504	$2,727,035,000	$1,384,985	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,454	36,455	$2,687,284,000	$1,848,201	$45.23	0.00%	$6.44	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,114	27,887	$2,617,195,000	$2,349,367	$45.23	0.00%	$6.44	0.00%

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Paperwork Reduction Act

The Paperwork Reduction Act of 1995 requires that OFCCP consider the impact of paperwork and other information collection burdens imposed on the public. *See* 44 U.S.C. 3507(d). An agency may not collect or sponsor the collection of information or impose an information collection requirement unless the information collection instrument displays a currently valid OMB control number. *See* 5 CFR 1320.5(b)(1).

OFCCP has determined that there is no new requirement for information collection associated with this proposed rule. The proposed rule provides definitions and a rule of construction to clarify the scope and application of current law. The information collection contained in the existing Executive Order 11246 regulations are currently approved under OMB Control Number 1250–0001 (Construction Recordkeeping and Reporting Requirements) and OMB Control Number 1250–0003 (Recordkeeping and Reporting Requirements—Supply and Service). Consequently, this proposed rule does not require review by the Office of Management and Budget under the authority of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this proposed rule does not include any federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

OFCCP has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' 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.''

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposed rule will not ''have substantial direct effects 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.''

List of Subjects in 41 CFR Part 60–1

Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Labor, Reporting and recordkeeping requirements.

Craig E. Leen,

Director, OFCCP.

For the reasons set forth in the preamble, OFCCP proposes to revise 41 CFR part 60–1 as follows:

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

■ 1. The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258 and E.O. 13672, 79 FR 42971.

■ 2. Amend § 60–1.3 by adding in alphabetical order the definition of ''Exercise of religion,'' ''Particular religion,'' ''Religion,'' ''Religious corporation, association, educational institution, or society,'' and ''Sincere'' to read as follows:

§ 60–1.3 Definitions.

* * * * *

Exercise of religion means any exercise of religion, whether or not compelled by, or central to, a system of religious belief. An exercise of religion need only be sincere.

* * * * *

Particular religion means the religion of a particular individual, corporation,

association, educational institution, society, school, college, university, or institution of learning, including acceptance of or adherence to religious tenets as understood by the employer as a condition of employment, whether or not the particular religion of an individual employee or applicant is the same as the particular religion of his or her employer or prospective employer.

* * * * *

Religion includes all aspects of religious observance and practice, as well as belief.

* * * * *

Religious corporation, association, educational institution, or society means a corporation, association, educational institution, society, school, college, university, or institution of learning that is organized for a religious purpose; holds itself out to the public as carrying out a religious purpose; and engages in exercise of religion consistent with, and in furtherance of, a religious purpose. To qualify as religious a corporation, association, educational institution, society, school, college, university, or institution of learning may, or may not: Have a mosque, church, synagogue, temple, or other house of worship; be nonprofit; or be supported by, be affiliated with, identify with, or be composed of individuals sharing, any single religion, sect, denomination, or other religious tradition.

* * * * *

Sincere means sincere under the law applied by the courts of the United States when ascertaining the sincerity of a party's religious exercise or belief.

■ 3. Amend § 60–1.5 by adding paragraph (e) to read as follows:

§ 60–1.5 Exemptions.

* * * * *

(e) *Broad interpretation.* This subpart shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the United States Constitution and law, including the Religious Freedom Restoration Act of 1993, as amended, 42 U.S.C. 2000bb *et seq.*

[FR Doc. 2019–17472 Filed 8–14–19; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500030115]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Three Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on three petitions to add or reclassify species under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that two petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate reviews of the statuses of those species to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding those species. Based on the status reviews, we will issue 12-month findings which will address whether or not the petitioned actions are warranted, in accordance with the Act. We also find that one petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we are not initiating a status review of that species in response to the petition. We refer to this finding as a ''not substantial'' petition finding.

DATES: These findings were made on August 15, 2019. As we commence work on the status reviews, we seek any new information concerning the statuses of, or threats to, the species or their habitats. We will consider any relevant information that we receive during our work on the status reviews.

ADDRESSES:

Supporting documents: Summaries of the bases for the petition findings contained in this document are available on *http://www.regulations.gov* under the appropriate docket number (see Tables 1 and 2 under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available for public inspection, by appointment, during normal business hours by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status Reviews: If you have new scientific or commercial data or other information concerning the statuses of, or threats to, the species for which a status review is being initiated, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate docket number (see the Table 1 under **SUPPLEMENTARY INFORMATION**). Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment Now!'' If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: [Insert appropriate docket number; see the Table 1 under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

Not-substantial petition finding: If you have new information concerning the status of, or threats to, this species, or its habitat, please submit that information to the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**, below.

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Gila topminnow	Jeff Humphrey, 602–242–0210; jeff_humphrey@fws.gov.
lake sturgeon	Barb Hosler, 517–351–1443; barbara_hosler@fws.gov.
Siskiyou Mountains salamander	Jenny Ericson, 530–841–3115; jenny_ericson@fws.gov.

If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the Lists (*i.e.,* ''list'' a species), remove a species from the Lists (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to ''credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted'' (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); or

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

Summaries of Petition Findings

The petition findings contained in this document are listed in the tables below, and the basis for each finding, along with supporting information, is available on *http://www.regulations.gov* under the appropriate docket number.

TABLE 1—STATUS REVIEWS

Common name	Docket No.	URL to docket on *http://www.regulations.gov*
Gila topminnow	FWS–R2–ES–2018–0109	*https://www.regulations.gov/docket?D=FWS-R2-ES-2018-0109.*
lake sturgeon	FWS–R3–ES–2018–0110	*https://www.regulations.gov/docket?D=FWS-R3-ES-2018-0110.*

TABLE 2—NOT-SUBSTANTIAL PETITION FINDING

Common name	Docket No.	URL to docket on *http://www.regulations.gov*
Siskiyou Mountains salamander	FWS–R8–ES–2018–0111	*https://www.regulations.gov/docket?D=FWS-R8-ES-2018-0111.*

Evaluation of a Petition To Reclassify the Gila Topminnow

Species and Range

Gila topminnow (*Poeciliopsis occidentalis occidentalis*); Arizona, New Mexico, and Mexico.

Petition History

On May 16, 2018, we received a petition from the Arizona Game and Fish Department, requesting that the Gila topminnow be reclassified from an endangered species to a threatened species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Gila topminnow due to potential reduction or mitigation of threats associated with the following: Destruction, modification, or curtailment of the species' habitat or range (Factor A); predation (Factor B); competition with nonnative aquatic species (Factor E); and cumulative effects associated with these threats.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2018–0109 under the Supporting Documents section.

Evaluation of a Petition To List the Lake Sturgeon as an Endangered or Threatened Species Under the Act

Species and Range

Lake sturgeon (*Acipenser fulvescens*); Great Lakes, St. Lawrence, Hudson Bay, and Mississippi River basins in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New York, North Dakota, Ohio, Pennsylvania, Tennessee, Vermont, and Wisconsin; Coosa River in Alabama and Georgia.

Petition History

On May 23, 2018, we received a petition from the Center for Biological Diversity, requesting that lake sturgeon be listed as threatened rangewide or that nine distinct population segments (DPSs) be listed as endangered or threatened and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted for the lake sturgeon due to potential threats associated with the following: Dams and hydroelectric facilities, dredging and channelization, and contaminants (Factor A); and habitat fragmentation, the species' life-history characteristics, and invasive species (Factor E). The petition also presented substantial information that the existing regulatory mechanisms may be inadequate to address impacts of these threats (Factor D).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0110 under the Supporting Documents section.

Evaluation of a Petition To List the Siskiyou Mountains Salamander as an Endangered or Threatened Species Under the Act

Species and Range

Siskiyou Mountains salamander (*Plethodon stormi*); California and Oregon.

Petition History

On March 13, 2018, we received a petition from the Center for Biological Diversity, Klamath-Siskiyou Wildlands Center, Environmental Protection Information Center, and Cascadia Wildlands requesting that the Siskiyou Mountains salamander be listed as endangered or threatened and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating the petitioned action may be warranted for the Siskiyou Mountains salamander. The petitioners have not provided information to support their assertions that the activities or conditions they identify as potential threats—logging, habitat fragmentation, fire, roads, mining, developed recreation, disease, and climate change—affect the species negatively, as the regulations require at 50 CFR 424.14(d). Because the petition does not present substantial information indicating that listing the Siskiyou Mountains salamander may be warranted, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see *Not-substantial petition finding* under **ADDRESSES**, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2018–0111 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under section 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the Gila topminnow and lake sturgeon present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

In addition, we have determined that the petition summarized above for the Siskiyou Mountains salamander does not present substantial scientific or commercial information indicating that the requested action may be warranted. Therefore, we are not initiating a status review for this species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 2, 2019.

Margaret E. Everson

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–17569 Filed 8–14–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500090022]

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List Eight Species as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to list eight species as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list the Arapahoe snowfly, brook floater, golden orb, Joshua tree, seaside alder, smooth pimpleback, tricolored blackbird, and yellow-banded bumble bee. However, we ask the public to submit to us at any time any new information that becomes available relevant to the status of any of the species mentioned above or their habitats.

DATES: The findings in this document were made on August 15, 2019.

ADDRESSES: Detailed descriptions of the basis for each of these findings are available on the internet at *http://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Arapahoe snowfly	FWS–R6–ES–2019–0031
Brook floater	FWS–R5–ES–2019–0032
Golden orb	FWS–R2–ES–2019–0034
Joshua tree	FWS–R8–ES–2016–0088
Seaside alder	FWS–R5–ES–2019–0036
Smooth pimpleback	FWS–R2–ES–2019–0037
Tricolored blackbird	FWS–R8–ES–2015–0138
Yellow-banded bumble bee	FWS–R5–ES–2016–0024

Supporting information used to prepare these findings is available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning these findings to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Arapahoe snowfly	Justin Shoemaker, Acting Regional Liaison, Mountain-Prairie Regional Office, 309–757–5800, ext. 214.
Brook floater	David Stilwell, Field Supervisor, New York Ecological Services Field Office, 607–753–9334.
Golden orb	Chuck Ardizzonne, Field Supervisor, Texas Coastal Field Office, 281–286–8282, ext. 26506.
Joshua tree	Ken Corey, Field Supervisor, Palm Springs Field Office, 760–322–2070.
Seaside alder	Cherry Keller, Senior Endangered Species Biologist, Chesapeake Bay Field Office, 410–573–4532.
Smooth pimpleback	Chuck Ardizzonne, Field Supervisor, Texas Coastal Field Office, 281–286–8282, ext. 26506.
Tricolored blackbird	Josh Hull, Recovery and Listing Division Chief, Sacramento Fish and Wildlife Office, 916–414–6742.
Yellow-banded bumble bee	Krishna Gifford, Endangered Species Act Listing Coordinator, Northeast Regional Office, 413–253–8619.

If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving any petition for which we have determined contained substantial scientific or commercial information indicating that the petitioned action may be warranted (section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*)) (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. ''Warranted but precluded'' means that (a) the petitioned action is warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and (b) expeditious progress is being made to add qualified species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of

that date. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may meet the definition of an endangered species or a threatened species because of any of the five factors, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor does not cause a species to meet the definition of an endangered species or a threatened species. If there is exposure and the species responds negatively, we determine whether that stressor drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is or remains warranted. For a species to be listed or remain listed, we require evidence that these stressors are operative threats to the species and its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Arapahoe snowfly (*Arsapnia arapahoe*), brook floater (*Alasmidonta varicosa*), golden orb (*Cyclonaias aurea*), *Yucca brevifolia* and *Yucca jaegeriana* (Joshua tree), *Alnus maritima* (seaside alder), smooth pimpleback (*Cyclonaias houstonensis*), tricolored blackbird (*Agelaius tricolor*), and yellow-banded bumble bee (*Bombus terricola*) meet the definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment forms for the Arapahoe snowfly, brook floater, golden orb, Joshua tree, seaside alder, smooth pimpleback, tricolored blackbird, and yellow-banded bumble bee contain more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that these species do not meet the definition of an endangered species or a threatened species. This supporting information can be found on the internet at *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for each of the findings in this document.

Arapahoe Snowfly

Previous Federal Actions

On April 6, 2010, we received a petition from the Xerces Society for Invertebrate Conservation, Dr. Boris Kondratieff, Save the Poudre: Poudre Water Keeper, Cache la Poudre River Foundation, WildEarth Guardians, and Center for Native Ecosystems, requesting that the Arapahoe snowfly be listed as an endangered species under the Act. On April 26, 2011, we published a 90-day finding in the **Federal Register** (76 FR 23256), concluding that the petition presented substantial scientific and commercial information indicating that listing Arapahoe snowfly may be warranted. On May 10, 2012, we published a 12-month finding in the **Federal Register** (77 FR 27386) in which we stated that listing the Arapahoe snowfly as endangered or threatened was warranted. However, listing was precluded at that time by higher priority actions, and the species was added to the candidate species list. From 2012 through 2016, we addressed the status of the Arapahoe snowfly annually in our candidate notice of review, with the determination that listing was warranted but precluded (see 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016).

Summary of Finding

The Arapahoe snowfly is a winter stonefly found in small streams characterized by substrates of pebble, cobble, and bedrock along the northern Front Range of the Rocky Mountains of Colorado. At the time of the preparation of the 12-month finding (77 FR 27386; May 10, 2012), the Arapahoe snowfly was documented in only 2 small tributaries of the Cache la Poudre River. Subsequently, the species has been documented in a total of 19 streams along the northern Front Range of Colorado. The number of Arapahoe snowfly individuals at these sites are consistently low; in sampling studies targeted at Arapahoe snowfly, only 41 of 26,170 specimens were morphologically identified as that taxon, and all were males. Arapahoe snowfly always co-occurred with two more-widely distributed and common stoneflies, *Arsapnia decepta* and *Capnia gracilaria.*

Genetic analyses, involving two mitochondrial genes, one nuclear gene, and thousands of individual nuclear polymorphisms, of 98 specimens from nine separate locations, demonstrated that all individuals examined were the first-generation progeny of crosses between female *Arsapnia decepta* and male *Capnia gracilaria.* No backcrosses or later-generation hybrids were observed, indicating that these progeny do not represent a self-sustaining lineage. Instead of representing a distinct taxon, individuals formerly recognized as being the distinct species *Arsapnia arapahoe* (the Arapahoe snowfly) are actually first-generation hybrids between female *A. decepta* and male *C. gracilaria* that appear in the narrow zone of range overlap between the parental species in northern Colorado. Therefore, we find the Arapahoe snowfly is not a valid taxonomic entity; does not meet the definition of a species or subspecies under the Act; and, as a result, cannot warrant listing under the Act. A detailed discussion of the basis for this finding can be found in the Arapahoe snowfly species assessment form and other

supporting documents (see **ADDRESSES**, above).

Brook Floater

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the brook floater, as endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information indicating that listing the brook floater may be warranted. This notice constitutes the 12-month finding on the April 20, 2010, petition to list the brook floater under the Act.

Summary of Finding

The brook floater is a small freshwater mussel usually less than 75 millimeters (2.95 inches) in length. The species is an Atlantic slope freshwater mussel historically native to the District of Columbia, 16 States in the eastern United States, and two Canadian provinces. The mussel has a widespread distribution, is currently found in 14 of the 16 historically known States, and is considered extirpated in Delaware and Rhode Island and in the District of Columbia.

The most robust populations of brook floaters inhabit creeks and rivers of varying size with stable substrates, intact riparian buffers (vegetated areas comprised of forest, shrub, or herbaceous plants located adjacent to streams), excellent water quality, and little to no anthropogenic influences. The species needs clean, low to moderately flowing water, with stable substrate (sand, gravel, and cobble), appropriate food levels, water temperatures above 14 °C (57.2 °F) for glochidia release, and interstitial chemistry and presence of fish hosts for glochidia attachment and dispersal.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the brook floater, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the brook floater's biological status include disjunct populations facing habitat loss or fragmentation; changes in water flows; and degraded water quality from development, energy production, and agriculture. We also assessed impacts to the brook floater from effects of climate change. There are uncertainties in predicting precipitation changes over such a wide range and assessing the species' response, but we do not expect effects from climate change to be a primary stressor affecting the species' viability. We examined a number of other factors, including inherent factors (small population size and low fecundity), predation, invasive species, and hybridization, and we found that these factors did not rise to such a level that affected multiple populations or the species as a whole.

Despite impacts from the primary stressors, the species has maintained resilient populations throughout its range. Although we predict some continued impacts from these stressors in the future, we anticipate the species will continue to maintain resilient populations throughout the foreseeable future that are distributed widely throughout each of its representative units. Therefore, we find that listing the brook floater as endangered or threatened is not warranted. A detailed discussion of the basis for this finding can be found in the brook floater species assessment form and other supporting documents (see **ADDRESSES**, above).

Golden Orb

Previous Federal Actions

On June 25, 2007, we received a petition from WildEarth Guardians (then Forest Guardians), to list 475 species in the Southwest Region, including the golden orb, as endangered or threatened species under the Act. On December 15, 2009, we published a 90-day finding in the **Federal Register** (74 FR 66260), concluding that the petition presented substantial information indicating that listing the golden orb may be warranted. On October 6, 2011, we published a 12-month finding in the **Federal Register** (76 FR 62166) in which we stated that listing the golden orb was warranted. However, listing was precluded at that time by higher priority actions, and the species was added to the candidate species list. From 2012 through 2016, we addressed the status of the golden orb annually in our candidate notice of review, with the determination that listing was warranted but precluded (see 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016).

Summary of Finding

Recent genetic studies revealed that individuals thought to be golden orb are actually members of a more widespread, common species, the pimpleback (*Cyclonaias pustulosa*). These studies have been widely accepted by the relevant scientific community and the Service. Due to being synonymized with pimpleback, golden orb is not a valid taxonomic entity; does not meet the definition of a species or subspecies under the Act; and, as a result, cannot warrant listing under the Act. A detailed discussion of the basis for this finding can be found in the golden orb species assessment form and other supporting documents (see **ADDRESSES**, above).

Joshua Tree

Previous Federal Actions

On September 29, 2015, we received a petition from Wild Earth Guardians to list the Joshua tree as a threatened species under the Act. On September 14, 2016, we published a 90-day finding in the **Federal Register** (81 FR 63160), concluding that the petition presented substantial information indicating that listing the Joshua tree may be warranted. Recent research has suggested Joshua tree is comprised of two species, based on morphological, pollinator, and genetic differences: *Yucca brevifolia* and *Yucca jaegeriana.* After reviewing these genetic analyses and corresponding with experts on plant taxonomy, we now consider that *Yucca brevifolia* and *Yucca jaegeriana* are two distinct species, and we conducted status reviews of both entities separately. This notice constitutes the 12-month finding on the September 29, 2015, petition to list Joshua tree under the Act.

Summary of Finding

The Joshua tree is a distinctive and iconic plant of the Mojave Desert and surrounding areas. The two species of Joshua tree are distinguished in the field by their respective vegetative and flora morphology, and by their differing obligate yucca moth pollinator. *Yucca brevifolia* is a 5- to 12-meters (16- to 40-feet) tall, evergreen, xerophytic monocot with a somewhat spongy, indehiscent (remaining closed at maturity) fruit that is pollinated by *Tegeticula synthetica,* a species of yucca moth. The leaves are between 19 to 37 centimeters (7.5 to 14.6 inches) long, and are clustered in rosettes at the branch ends. The flowers are nearly spherical with short, wide petals that curve over the tip of the pistils and occur in dense, heavy panicles. *Yucca jaegeriana* is a 3- to 6-meters (9- to 20-feet) tall, evergreen,

xerophytic monocot with spongy, indehiscent fruit that is pollinated by *Tegeticula antithetica,* a species of yucca moth. *Yucca jaegeriana* displays dichotomous branching and generally has shorter leaves (less than 22 centimeters (8.7 inches)) and shorter height to first branching at 0.75 to 1.0 meter (2.3 to 3.3 feet) than *Y. brevifolia.*

Joshua trees generally occur on flats, mesas, bajadas, and gentle slopes (alluvial fans). Joshua trees grow on a wide variety of soil types but generally on old alluvia of igneous, rather than sedimentary, origin that consist of silty, loamy, or sandy soils that have minimal runoff. Joshua trees are able to tolerate alkaline or saline soils in soil temperatures that range from 4 °C (39 °F) in winter to 46 °C (110 °F) in summer.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats to Joshua tree, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors to Joshua trees include wildfire, invasive plants, effects of climatic changes, and habitat loss. While these threats are currently acting on *Yucca jaegeriana* and *Y. brevifolia* individually, we did not find that they were acting on the two species at either a population- or species-level scale. With the two species still occupying their historical ranges, which extend to over 2.2 million hectares (5.6 million acres) for *Y. brevifolia* and 2.5 million hectares (6.4 million acres) for *Y. jaegeriana,* as well as a hybrid zone of approximately 52,000 hectares (130,000 acres), the current conditions of the two species still provide for enough resiliency, redundancy, and representation despite the identified threats acting on them. There is no evidence to indicate recent population size reductions or range contractions for either species over the last 40 years based on distribution mapping. Recruitment of both *Y. jaegeriana* and *Y. brevifolia* is occurring across their respective ranges.

Similarly, estimates of future resiliency, redundancy, and representation for *Yucca jaegeriana* and *Y. brevifolia* are high. The two species will most likely face the same threats they are currently facing into the future (wildfire, invasive plants, effects of climatic changes, and habitat loss). We evaluated environmental conditions and threat factors acting on the two species into the future (approximately 80 years) and developed two future scenarios to assist in determining the potential future conditions for the two species. Because the two species are long-lived, have such large ranges and distributions, mostly occur on Federal land, and occupy numerous ecological settings, we have determined that future stochastic and catastrophic events would not lead to population- or species-level declines in the foreseeable future. As a result, we have determined that neither *Yucca jaegeriana* nor *Yucca brevifolia* are in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of their ranges. Therefore, we find that listing the Joshua tree as an endangered or threatened species is not warranted. A detailed discussion of the basis for this finding can be found in the Joshua tree species assessment form and other supporting documents (see **ADDRESSES**, above).

Seaside Alder

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, the Alabama Rivers Alliance, the Clinch Coalition, Dogwood Alliance, the Gulf Restoration Network, Tennessee Forests Council, and the West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including seaside alder, as endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information indicating that listing the seaside alder may be warranted. Although the petitioned entity is seaside alder, the best available information indicates that seaside alder comprises three subspecies: *Alnus maritima* ssp. *maritima* (Delmarva alder), *A. maritima* ssp. *georgiensis* (Georgia alder), and *A. maritima* ssp. *oklahomensis* (Oklahoma alder). The Service used its discretion to conduct the status review at the species and subspecies levels. This notice constitutes the 12-month finding on the April 20, 2010, petition to list seaside alder under the Act.

Summary of Finding

Seaside alder is a large, deciduous shrub or small tree, 16 to 23 feet (5 to 7 meters) tall that grows in multistemmed clumps, instead of individual trees, in the wet soils of river, stream, or pond edges. Despite its name, it is known to occur only in freshwater habitats and prefers areas with full sun and soils that are at least periodically saturated or inundated. The species is capable of both sexual and asexual reproduction, but evidence of new plants from seedlings is rare, and, like many other riparian shrubs, seaside alder primarily reproduces asexually through clones and runners. Despite this, genetic diversity appears to be adequate.

The species currently occurs in three regional populations that have been described and accepted as subspecies: Delmarva alder (*A. maritima* spp. *maritima*) in Dorchester, Somerset, Wicomico, and Worcester Counties in Maryland, and Kent and Sussex Counties in Delaware; Georgia alder (*A. maritima* spp. *georgiensis*) in Bartow County, Georgia; and Oklahoma alder (*Alnus maritima* spp. *oklahomensis*) in Pontotoc and Johnston Counties of south-central Oklahoma. The seaside alder occupies at least 35 known watersheds, and the species' current distribution is similar to its historical distribution. We are aware of additional records of occurrence on private lands; however, supporting information on those records is not available to us, and, therefore, these records are not included in our assessment.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to seaside alder, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors to seaside alder, which vary depending on the subspecies, include changes to natural processes such as drought cycles, air temperature, precipitation patterns, flooding regimes, and sea level rise, or human-mediated actions (*e.g.,* human population growth, development, and mining) that cause decreased water quantity and water quality degradation. Despite effects from these stressors, seaside alder has maintained resilient populations throughout its range and in each of the subspecies' ranges, and is expected to continue to do so into the foreseeable future. The species is represented by three genetically diverse subspecies, which occur in many types of freshwater habitat (tidal rivers, marshes and ponds, and spring-fed streams and rivers) that are adapted to three distinct climates (mid-Atlantic, Southeast, and Southwest); thus, the species is expected to retain its ability to adapt to changes in its environment. In summary, our review of the best available scientific and commercial information indicates that seaside alder does not meet the definition of an endangered species or threatened species. We also find that Delmarva

alder, Georgia alder, and Oklahoma alder do not meet the definition of endangered species or threatened species. Therefore, we find that listing seaside alder or any of its subspecies as an endangered or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the seaside alder species assessment form and other supporting documents (see **ADDRESSES**, above).

Smooth Pimpleback

Previous Federal Actions

On October 15, 2008, we received a petition from WildEarth Guardians, to list six species of freshwater mussels, including the smooth pimpleback, as endangered or threatened species under the Act. On December 15, 2009, we published a 90-day finding in the **Federal Register** (74 FR 66260), concluding that the petition presented substantial information indicating that listing the smooth pimpleback may be warranted. On October 6, 2011, we published a 12-month finding in the **Federal Register** (76 FR 62166) in which we stated that listing the smooth pimpleback was warranted. However, listing was precluded at that time by higher priority actions, and the species was added to the candidate species list. From 2012 through 2016, we addressed the status of the smooth pimpleback annually in our candidate notice of review, with the determination that listing was warranted but precluded (see 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016).

Summary of Finding

Recent genetic studies revealed that smooth pimpleback is synonymous with pimpleback, a wide-ranging species that is very common. These studies have been widely accepted by the relevant scientific community and the Service. Due to being synonymized with pimpleback, smooth pimpleback is not a valid taxonomic entity; does not meet the definition of a species or subspecies under the Act; and, as a result, cannot warrant listing under the Act. A detailed discussion of the basis for this finding can be found in the smooth pimpleback species assessment form and other supporting documents (see **ADDRESSES**, above).

Tricolored Blackbird

Previous Federal Actions

On February 3, 2015, we received a petition from the Center for Biological Diversity to list the tricolored blackbird as an endangered or threatened species under the Act. On September 18, 2015, we published a 90-day finding in the **Federal Register** (80 FR 56423), concluding that the petition presented substantial information indicating that listing the tricolored blackbird may be warranted. This document constitutes the 12-month finding on the February 3, 2015, petition to list the tricolored blackbird under the Act.

Summary of Finding

The tricolored blackbird occurs throughout most of lower-elevation California and additional smaller nesting colonies in Oregon, Washington, and Nevada in the United States, and in Baja California, Mexico. The tricolored blackbird exhibits a unique breeding behavior that is a combination of colonial, nomadic, and itinerant behaviors. Its colonial and generally highly synchronous nesting behavior is thought to be an adaptation to unpredictable insect outbreaks and/or high rates of predation pressure, as well as allowing the species to exploit available nesting and foraging opportunities in a changing environment. The species requires a protected nesting substrate (a vegetative substrate that is sturdy enough for nest placement and is protected by being surrounded by water, by having spines, and/or by being dense), such as wetland habitats with cattails and/or bulrushes; spiny, nonnative plants such as Himalayan blackberry or thistle; or silage crops grown for dairy cattle feed. Young tricolored blackbirds are fed a diet comprised almost entirely of insects, and adult blackbirds consume both native insects and other plant material such as grains and seeds.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats to the tricolored blackbird, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The tricolored blackbird is currently facing many threats throughout its range, and the species has undergone a substantial decline in recent decades. Still, more than 100,000 tricolored blackbirds were recorded in the most recent Statewide surveys, and individuals in the central portions of the species' range are well-connected, with birds frequently shifting their use of nesting sites and regions based on availability of suitable habitat.

Many threats are continuing to impact the tricolored blackbird and its habitat, and drought may result in a decrease in habitat quality across the species' range. Furthermore, several researchers have indicated that, as a colonial nesting species, the tricolored blackbird may undergo a similarly rapid decline as have other colonial nesting birds. However, the tricolored blackbird has shown high nesting success in both small and large colonies, indicating that they may be adaptable to changing colony size as well as changing nesting habitat types. Additionally, regulatory mechanisms such as the California Endangered Species Act are currently acting to ameliorate the severity of some existing threats, such as impacts to colonies nesting in silage fields. Furthermore, the most likely future scenarios project that the tricolored blackbird will maintain its current resiliency, representation, or redundancy, or undergo only a slight decrease in habitat and population condition in some regions in the foreseeable future. Therefore, we find that listing the tricolored blackbird as endangered or threatened is not warranted. A detailed discussion of the basis for this finding can be found in the tricolored blackbird species assessment form and other supporting documents (see **ADDRESSES**, above).

Yellow-Banded Bumble Bee

Previous Federal Actions

On September 15, 2015, we received a petition from Defenders of Wildlife requesting that the yellow-banded bumble bee be listed as an endangered or threatened species and critical habitat be designated for this species under the Act. On March 16, 2016, we published a 90-day finding in the **Federal Register** (81 FR 14058), concluding that the petition presented substantial scientific or commercial information indicating that listing the yellow-banded bumble bee may be warranted. This document constitutes the 12-month finding on the September 15, 2015, petition to list the yellow-banded bumble bee under the Act.

Summary of Finding

The yellow-banded bumble bee is an early-spring emerging bumble bee living in colonies that include a queen, worker bees (sterile females), and reproductives (new queens and fertile males). Colonies are annual, and the founding queen, workers, and males all die in the late summer or early fall. The mated new queens overwinter in a state of dormancy. Adult yellow-banded bumble bees have black hairs on their heads, legs, and base of the abdomen; yellow hairs on the front of the thorax and

second and third segments; and slightly brown wings.

The yellow-banded bumble bee's current range includes Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, South Dakota, Vermont, West Virginia, and Wisconsin in the United States; and Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon Territory in Canada. The species inhabits a variety of forest types, including riparian woodland, mature deciduous and conifer forests, and treeline conifer forests. The species also uses wetlands, undisturbed bogs, alpine tundra, and prairies. The yellow-banded bumble bee requires diverse and abundant floral resources in proximity to nesting habitat throughout the spring, summer, and fall. It also requires suitable nesting and overwintering habitat.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats to the yellow-banded bumble bee, and we evaluated all relevant factors under the five listing factors, as well as existing conservation measures and the synergistic effects of the threats. The primary stressors are habitat loss and fragmentation, pesticide use, pathogens and parasites, the effects of small and isolated populations, and the effects of climate change.

In the species' current condition, there is representation (*i.e.,* occupancy) across the majority of the yellow-banded bumble bee's historical range. Although there has been a reduction in range with the apparent extirpation of the species from three ecoregions, the species continues to be found across 15 ecoregions, spanning much of the northern United States and much of Canada. Also, while the relative abundance has declined, there remains relatively consistent numbers of yellow-banded bumble bees captured across multiple States since the 1950s. The continued captures of the yellow-banded bumble bee indicate ongoing resiliency and redundancy supporting multiple populations of the species across its range. The continued persistence of occupied habitat across the species' range provides sufficient resiliency, redundancy, and representation to sustain the species beyond the near term.

We evaluated four future scenarios for the yellow-banded bumble bee. The future scenarios all retain resiliency, redundancy, and representation to a sufficient degree such that the risk is low that the species will be in danger of extinction in the foreseeable future. The large range that the yellow-banded bumble bee inhabits provides for redundancy, as populations are distributed across the species' range such that it can withstand a catastrophic event. The species will continue to exhibit high or moderate resiliency in at least four ecoregions that are spread across the species' range; in two of the four future scenarios, seven ecoregions are projected to be in high or moderate resiliency in 20 years. Finally, the species would exhibit representation by continuing to occur across its range in various ecoregions to maintain ecological and genetic diversity. Taking into account the effects of the most likely threats and the potential for cumulative effects to the yellow-banded bumble bee's resource needs, our projections for the viability of the yellow-banded bumble bee in the future are that it will continue to be represented throughout its range, albeit at likely reduced occupancy and relative abundance percentages than currently found.

Our review of the best available scientific and commercial information indicates that the yellow-banded bumble bee is not in danger of extinction throughout all or a significant portion of its range or likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, we find that listing the yellow-banded bumble bee is not warranted. A detailed discussion of the basis for this finding can be found in the yellow-banded bumble bee species assessment form and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Arapahoe snowfly, brook floater, golden orb, Joshua tree, seaside alder, smooth pimpleback, tricolored blackbird, and yellow-banded bumble bee to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

Lists of the references cited in the petition findings are available on the internet at *http://www.regulations.gov* in the dockets provided above in **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 25, 2019

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–17536 Filed 8–14–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 84, No. 158

Thursday, August 15, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–087]

Steel Propane Cylinders From the People's Republic of China: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order on steel propane cylinders from the People's Republic of China (China).

DATES: Applicable August 15, 2019.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(a), 705(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), Commerce published its affirmative final determination in the countervailing duty investigation of steel propane cylinders from China on June 21, 2019.[1] On August 5, 2019, the ITC notified Commerce of its final affirmative determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act, by reason of subsidized imports of steel propane cylinders from China.[2]

Scope of the Order

The merchandise covered by this order is steel propane cylinders from China. For a complete description of the scope of this order, *see* the appendix to this notice.

Countervailing Duty Order

On August 5, 2019, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured by reason of imports of steel propane cylinders from China.[3] Therefore, in accordance with sections 705(c)(2) and 706 of the Act, we are issuing this countervailing duty order. Because the ITC determined that imports of steel propane cylinders from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

As a result of the ITC's final affirmative determination, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of steel propane cylinders from China entered, or withdrawn from warehouse, for consumption on or after October 26, 2018, the date of publication of the *Preliminary Determination,*[4] but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's final injury determination, as further described below.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* steel propane cylinders from China), effective on the date of publication of the ITC's final determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed.

Estimated Subsidy Rates

The estimated subsidy rates for the countervailing duty order are as follows:

Company	Subsidy rate (percent)
Guangzhou Lion Cylinders Co. Ltd	142.37
Hubei Daly LPG Cylinder Manufacturer Co. Ltd	142.37
Shandong Huanri Group Co. Ltd	37.91
Taishan Machinery Factory Ltd	142.37
TPA Metals and Machinery (SZ) Co. Ltd	142.37
Wuyi Xilinde Machinery Manufacture Co., Ltd	142.37
Zhejiang Jucheng Steel Cylinder Co., Ltd	142.37
All Others	37.91

Provisional Measures

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published the affirmative *Preliminary Determination* on October 26, 2018. Therefore, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on February 22, 2019.

Therefore, in accordance with section 703(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of steel propane cylinders from China entered, or withdrawn from warehouse, for consumption on or after February 23, 2019, the date on which provisional measures expired, through the day preceding the date of publication of the

[1] *See Steel Propane Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 84 FR 29159 (June 21, 2019).

[2] *See* ITC Letter, dated August 5, 2019 (ITC Letter).

[3] *See* ITC Letter.

[4] *See Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 54086 (October 26, 2018) (*Preliminary Determination*).

ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to steel propane cylinders from China pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: August 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The products subject to this order are steel cylinders for compressed or liquefied propane or other gases (Steel Propane Cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706 and otherwise meeting the description provided below. The scope includes steel propane cylinders regardless of whether they have been certified to these specifications before importation. Steel propane cylinders range from 2.5 pound nominal gas capacity (approximate 6 pound water capacity and approximate 4–6 pound tare weight) to 42 pound nominal gas capacity (approximate 100 pound water capacity and approximate 28–32 pound tare weight). Steel propane cylinders have two or fewer ports and may be imported assembled or unassembled (*i.e.,* welded or brazed before or after importation), with or without all components (including collars, valves, gauges, tanks, foot rings, and overfill prevention devices), and coated or uncoated. Also included within the scope are drawn cylinder halves, unfinished propane cylinders, collars, and foot rings for steel propane cylinders.

An ''unfinished'' or ''unassembled'' propane cylinder includes drawn cylinder halves that have not been welded into a cylinder, cylinders that have not had flanges welded into the port hole(s), cylinders that are otherwise complete but have not had collars or foot rings welded to them, otherwise complete cylinders without a valve assembly attached, and cylinders that are otherwise complete except for testing, certification, and/or marking.

This order also covers steel propane cylinders that meet, are produced to meet, or are certified as meeting, other U.S. or Canadian government, international, or industry standards (including, for example, American Society of Mechanical Engineers (ASME), or American National Standard Institute (ANSI)), if they also meet, are produced to meet, or are certified as meeting USDOT Specification 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or a United Nations pressure receptacle standard ISO 4706.

Subject merchandise also includes steel propane cylinders that have been further processed in a third country, including but not limited to, attachment of collars, foot rings, or handles by welding or brazing, heat treatment, painting, testing, certification, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope steel propane cylinders.

Specifically excluded are seamless steel propane cylinders and propane cylinders made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight), aluminum, or composite fiber material. Composite fiber material is material consisting of the mechanical combination of two components: Fiber (typically glass, carbon, or aramid (synthetic polymer)) and a matrix material (typically polymer resin, ceramic, or metallic).

The merchandise subject to this order is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2019–17313 Filed 8–14–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results and Intent To Rescind the Review in Part; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminary determines that it is appropriate to rescind this administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (China) with respect to three of the four companies involved in this review because they had no *bona fide* (*i.e.,* reviewable) sales to the United States during the period of review (POR), and to find that the fourth respondent is not eligible for a separate rate. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 15, 2019.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959 or (202) 482–6274, respectively.

SUPPLEMENTARY INFORMATION:

Background

In August 2018, Commerce published a notice of initiation of an administrative review covering the POR June 1, 2017 through May 31, 2018, with respect to 14 companies.[1] In November 2018, as the result of timely withdrawal requests, we rescinded the review with respect to 10 exporters.[2] This review covers three mandatory respondents, Shandong Aokai Bearing Co., Ltd. (Aokai); Taizhou Zson Bearing Technology Co., Ltd. (Zson); and Zhejiang Jingli Bearing Technology Co. Ltd. (Jingli), plus one separate rate applicant, Hangzhou Xiaoshan Dingli Machinery Co., Ltd. (Dingli).

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[3] The revised deadline for the preliminary results in this review is now August 9, 2019.

Scope of the Order

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from China; flange, take up cartridge, and hanger units incorporating tapered

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 39688 (August 10, 2018); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 45596, 45603 (September 10, 2018), correcting the spelling of one company name.

[2] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review; 2017–2018,* 83 FR 58229 (November 19, 2018).

[3] *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 affected by the partial federal government closure have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.

roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[4] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, 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/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice.

China-Wide Entity

Under Commerce's current policy regarding the conditional review of the China-wide entity, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.[5] Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 92.84 percent).[6] Because Zson did not respond to the questionnaire, Commerce preliminarily determines that Zson is not eligible for a separate rate and is a part of the China-wide entity.

Preliminary Partial Recession of the Antidumping Administrative Review

As discussed in the *Bona Fides* Memoranda,[7] Commerce preliminarily finds the sales made by Aokai, Dingli, and Jingli, which serve as the basis for our review of these companies, are not *bona fide* sales. Commerce reached this conclusion based on the totality of the record information surrounding Aokai's, Dingli's, and Jingli's reported sales, including, but not limited to, the sales price and quantity, timing of the sales, the identity of the U.S. customers and how they purchased and resold the TRBs in question, and the fact that each exporter made only one sale during the POR.

Because the non-*bona fide* sales were the only reported sales of subject merchandise during the POR, we find that Aokai, Dingli, and Jingli had no reviewable transactions during this POR. Accordingly, we are preliminarily rescinding this administrative review with respect to Aokai, Dingli, and Jingli.[8] Given that the factual information used in our *bona fides* analysis of Aokai's, Dingli's, and Jingli's sales involves business proprietary information, *see* the *Bona Fides* Memoranda for a full discussion of the basis for our preliminary findings.

Disclosure and Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[9] Rebuttals to case briefs may be filed no later than five days after case briefs are filed and all rebuttal briefs must be limited to comments raised in the case briefs.[10] Parties who submit comments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11]

Any interested party may request a hearing within 30 days of publication of this notice.[12] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.[13] If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[14]

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time (ET) on the due date.[15] Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5:00 p.m. ET on the due date.[16]

Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of all issues raised in the case briefs, no later than 90 days after the date these preliminary results are issued, pursuant to section 751(a)(2)(B) of the Act.

Assessment Rates

Upon issuance of the final results of the administrative review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[17] For the final results, if we continue to treat Zson as part of the China-wide entity, we will instruct CBP to assess dumping duties

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[6] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review* 74 FR 3987, 3988–89 (January 22, 2009).

[7] *See* Memoranda, ''31st Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Analysis of the *Bona Fides* of Shandong Aokai Bearing Co., Ltd.'s Sale''; ''31st Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Analysis of the *Bona Fides* of Hangzhou Xiaoshan Dingli Machinery Co., Ltd.'s Sale''; and ''31st Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Analysis of the *Bona Fides* of Zhejiang Jingli Bearing Technology Co. Ltd.'s Sale,'' all dated August 9, 2019 (collectively, *Bona Fides* Memoranda).

[8] *See* 19 CFR 351.213(d)(3).

[9] *See* 19 CFR 351.309(c)(1)(ii).

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.309(c)(2).

[12] *See* 19 CFR 351.310(c).

[13] *Id.*

[14] *See* 19 CFR 351.310(d).

[15] *See* 19 CFR 351.103(c).

[16] *See* 19 CFR 351.303(b); and ''ACCESS Handbook on Electronic Filing Procedures Enforcement and Compliance International Trade Administration U.S. Department of Commerce,'' dated October 24, 2017, available at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[17] *See* 19 CFR 351.212(b)(1).

on Zson's entries of subject merchandise at the rate of 92.84 percent, the current rate established for the China-wide entity.

If Commerce proceeds to a final rescission of this administrative review for Aokai, Dingli, and Jingli, their entries will be assessed at the rate entered. If we do not proceed with a final rescission of this administrative review for Aokai, Dingli, and Jingli, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific assessments rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if the importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

We intend to issue assessment instructions to CBP 15 days after the publication of the final results of these reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be equal to the exporter-specific weighted-average dumping margin published for the most recently-completed segment of this proceeding; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the cash deposit rate established for the China-wide entity, 92.84 percent; and (3) for all exporters of subject merchandise which are not located in China and which are not eligible for a separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l), 751(a)(2)(B) and 777(i)(l) of the Act, and 19 CFR 351.221(b)(4).

Dated: August 9, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

[FR Doc. 2019–17540 Filed 8–14–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–086; A–549–839]

Steel Propane Cylinders From the People's Republic of China and Thailand: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), we are issuing antidumping duty orders on steel propane cylinders from the People's Republic of China (China) and Thailand. Additionally, we are amending our final affirmative determination of sales at less than fair value (LTFV) for steel propane cylinders from China as a result of ministerial errors.

DATES: Applicable August 15, 2019.

FOR FURTHER INFORMATION CONTACT: Laura Griffith or Cindy Robinson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6430 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(a), 735(d), and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), Commerce published its affirmative final determinations in the LTFV investigations of steel propane cylinders from China and Thailand on June 21, 2019.[1] On August 5, 2019, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of the LTFV imports of steel propane cylinders from China and Thailand.[2]

Scope of the Orders

The merchandise covered by these orders is steel propane cylinders from China and Thailand. For a complete discussion of the scope of these orders, *see* the appendix to this notice.

Amendment to the China Final Determination

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.[3]

Pursuant to sections 735(e) of the Act and 19 CFR 351.224(e) and (f), Commerce is amending the *China Final Determination* to reflect the correction of one ministerial error in the final estimated weighted-average dumping margin calculated for Hong Kong GSBF Company Limited (GSBF). In addition, because GSBF's estimated weighted-average dumping margin contributes to the basis for the estimated weighted-average dumping margin determined for the non-examined separate-rate respondent, Jiaxing Pressure Vessel Factory (Jiaxing Pressure Vessel), we also are revising the weighted-average dumping margin for Jiaxing Pressure Vessel.[4] The amended estimated

[1] *See Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 84 FR 29161 (June 21, 2019) (*China Final Determination*); *see also Steel Propane Cylinders from Thailand: Final Determination of Sales at Less Than Fair Value,* 84 FR 29168 (June 21, 2019).

[2] *See* ITC Letter, dated August 5, 2019 (ITC Letter).

[3] *See* section 735(e) of the Act; and 19 CFR 351.224(f).

[4] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Steel Propane Cylinders from The People's Republic of China: Allegation of Ministerial Errors in the Final Determination,'' dated July 22, 2019 (Final Ministerial Error Memorandum) at 4.

weighted-average dumping margins are listed in the Suspension of Liquidation section below.

Additionally, for the *China Final Determination,* we incorrectly made an offset, pursuant to section 777A(f) of the Act, to the respondents' cash deposit rates for policy loans to the steel propane cylinders industry found to be countervailable in the companion countervailing duty investigation. Therefore, Commerce is amending the *China Final Determination* to exclude policy loans from the determination of the double remedy offset in the calculation of cash deposit rates.[5] Because GSBF's and Jiaxing Pressure Vessel's margins have changed, and because we have revised the double remedy offset, the cash deposit rates for all companies have changed.[6]

Antidumping Duty Orders

On August 5, 2019, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of imports of steel propane cylinders from China and Thailand.[7] Therefore, in accordance with sections 735(c)(2) and 736 of the Act, we are issuing these antidumping duty orders. Because the ITC determined that imports of steel propane cylinders from China and Thailand are materially injuring a U.S. industry, unliquidated entries of such merchandise from China or Thailand, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

As a result of the ITC's final affirmative determinations, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, for all relevant entries of steel propane cylinders from China and Thailand. In the case of entries from China, the antidumping duties will be adjusted for export subsidies found in the final determination of the companion countervailing duty investigation. Antidumping duties will be assessed on unliquidated entries of steel propane cylinders from China and Thailand entered, or withdrawn from warehouse, for consumption on or after December 27, 2018, the date of publication of the *Preliminary Determinations,*[8] but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's injury determination, as further described below.

Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* steel propane cylinders from China and Thailand) effective on the date of publication of the ITC final determination in the **Federal Register**. Commerce will also instruct CBP to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, adjusted by the amount of export subsidies, where appropriate. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated import duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The China-wide and all-others rates apply to all other producers or exporters not specifically listed.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

CHINA

Producer	Exporter	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
GSBF Tank Inc	Hong Kong GSBF Company Limited	43.65	11.88
Shandong Huanri Group Co. Ltd	Shandong Huanri Group Co. Ltd	25.52	0.00
Jiaxing Pressure Vessel Factory	Jiaxing Pressure Vessel Factory	26.68	0.00
China-Wide Entity		108.60	76.83

THAILAND

Producer/exporter	Weighted-average margin (percent)
Sahamitr Pressure Container Public Company Limited	10.77
All Others	10.77

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than six months. Commerce published its affirmative *Preliminary Determinations* on December 27, 2018. Therefore, the six-month period beginning on the date of publication of the *Preliminary Determinations* ended on June 25, 2019. Accordingly, pursuant to section 733(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of steel propane cylinders from China and Thailand entered, or withdrawn from warehouse, for consumption after June 25, 2019, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**.

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to

[5] *See* Final Ministerial Error Memorandum at 4.

[6] *Id.*

[7] *See* ITC Letter.

[8] *See Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures,* 83 FR 66675 (December 27, 2018); *see also Steel Propane Cylinders from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 84 FR 66678 (December 27, 2018) (collectively, *Preliminary Determinations*).

steel propane cylinders from China and Thailand pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: August 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Orders

The merchandise covered by these orders is steel cylinders for compressed or liquefied propane or other gases (steel propane cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706 and otherwise meeting the description provided below. The scope includes steel propane cylinders regardless of whether they have been certified to these specifications before importation. Steel propane cylinders range from 2.5 pound nominal gas capacity (approximate 6 pound water capacity and approximate 4–6 pound tare weight) to 42 pound nominal gas capacity (approximate 100 pound water capacity and approximate 28–32 pound tare weight). Steel propane cylinders have two or fewer ports and may be imported assembled or unassembled (*i.e.,* welded or brazed before or after importation), with or without all components (including collars, valves, gauges, tanks, foot rings, and overfill prevention devices), and coated or uncoated. Also included within the scope are drawn cylinder halves, unfinished propane cylinders, collars, and foot rings for steel propane cylinders.

An ''unfinished'' or ''unassembled'' propane cylinder includes drawn cylinder halves that have not been welded into a cylinder, cylinders that have not had flanges welded into the port hole(s), cylinders that are otherwise complete but have not had collars or foot rings welded to them, otherwise complete cylinders without a valve assembly attached, and cylinders that are otherwise complete except for testing, certification, and/or marking.

These orders also cover steel propane cylinders that meet, are produced to meet, or are certified as meeting, other U.S. or Canadian government, international, or industry standards (including, for example, American Society of Mechanical Engineers (ASME), or American National Standard Institute (ANSI)), if they also meet, are produced to meet, or are certified as meeting USDOT Specification 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or a United Nations pressure receptacle standard ISO 4706.

Subject merchandise also includes steel propane cylinders that have been further processed in a third country, including but not limited to, attachment of collars, foot rings, or handles by welding or brazing, heat treatment, painting, testing, certification, or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the in-scope steel propane cylinders.

Specifically excluded are seamless steel propane cylinders and propane cylinders made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight), aluminum, or composite fiber material. Composite fiber material is material consisting of the mechanical combination of two components: Fiber (typically glass, carbon, or aramid (synthetic polymer)) and a matrix material (typically polymer resin, ceramic, or metallic).

The merchandise subject to these orders is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2019–17312 Filed 8–14–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit modifications.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan (Permit No. 21482), Amy Hapeman (Permit Nos. 21367–01 and 22218), and Carrie Hubard (Permit No. 22965); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in the table below.

Permit No.	RIN	Applicant	Previous **Federal Register** notice	Permit or amendment issuance date
21367–01	0648–XF862	Christopher Marshall, Ph.D., Texas A&M University at Galveston, 200 Seawolf Parkway, Galveston, TX 77553.	84 FR 23020; May 21, 2019	July 24, 2019.
21482	0648–XG359	Dan T. Engelhaupt, Ph.D., HDR, Inc., 4173 Ewell Road, Virginia Beach, VA 23455.	84 FR 22452; May 17, 2019	July 19, 2019.
22218	0648–XG499	NMFS Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543 (Responsible Party: Dr. Jon Hare).	83 FR 50646; October 9, 2018	July 30, 2019.
22965	0648–XG961	Sea to Sea Productions Ltd., 477 Island View Drive, Boutiliers Point, Nova Scotia, Canada B3Z1R3 (Responsible Party: David Kent Nason).	84 FR 15602; April 16, 2019	July 10, 2019.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: August 12, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–17565 Filed 8–14–19; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0044]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC) announces a submission to the Office of Management and Budget (OMB), requesting an extension of approval for a collection of information associated with testing and recordkeeping requirements in regulations implementing the Safety Standard for Cigarette Lighters, approved previously under OMB Control No. 3041–0116. On June 5, 2019, CPSC published a notice announcing the agency's intent to seek an extension of approval of this collection of informations. CPSC received no comments in response to that notice.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by September 16, 2019.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at: *https://www.regulations.gov,* under Docket No. CPSC–2009–0044.

FOR FURTHER INFORMATION CONTACT: Bretford Griffin, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *bgriffin@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The CPSC seeks to renew the following currently approved collection of information. CPSC previously published a notice announcing the agency's intent to seek an extension of approval of this collection of information (84 FR 26079), and did not receive any comments. Accordingly, the information collection has been submitted to OMB without change.

Title: Safety Standard for Cigarette Lighters.

OMB Number: 3041–0116.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of cigarette lighters.

Estimated Number of Respondents: In 2018, 42 firms submitted information to the CPSC on 231 lighter models. There were four new lighter models and 227 lighters that were comparable to models previously tested (comparison lighters).

Estimated Time per Response: The burden associated with the standard includes the time and cost spent testing and maintaining the test records, either by the firm or by outside contractors. If tests are conducted in-house, staff expects that testing new lighter models would take about 90 hours per model. The total testing time for the four models would be 360 hours. Recordkeeping consists of two separate components: Recordkeeping for new lighter models, and recordkeeping for comparison lighters.

New Lighter Models—Staff estimates the time burden for recordkeeping for new lighter models to be 20 hours per model. Staff expects the total time for recordkeeping to be 80 hours (20 hours × 4 models). If tests are conducted in-house for each new model, product testing for each firm would take approximately 90 hours per model, for a total of 360 hours (90 hours × 4 models).

Comparison Lighters—Firms may also submit comparison lighters to demonstrate compliance with the standard. In 2018, 227 comparison lighters were reported to the CPSC. Although firms bear no testing costs for comparison lighters, staff estimates the burden hours for recordkeeping to be 3 hours per model. Thus, staff estimates recordkeeping for comparison lighters would take 681 hours (227 models × 3 hours).

Reporting Requirements—Firms will require approximately 1 hour per model to submit forms to CPSC, for a total annual reporting burden of 231 hours (231 models × 1 hour).

Total Estimated Annual Burden: The annual total number of hours could be as high as 1,352 hours (360 testing + 761 recordkeeping hours + 231 reporting hours) per year. If some firms elect to outsource testing of new models, the burden could be less. The CPSC estimates the total cost for firms to test, and prepare, maintain, and submit records to the CPSC in compliance with the lighter regulation would be in the range of $59,064 to $115,929, depending upon the test method chosen.

General Description of Collection: In 1993, the CPSC issued the Safety Standard for Cigarette Lighters (16 CFR part 1210) under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with cigarette lighters. The standard requires certain test protocols, as well as recordkeeping and reporting requirements. 16 CFR part 1210, subpart B. In addition, section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–17493 Filed 8–14–19; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for External Reviewer Application

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, CNCS is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 15, 2019.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Office of Grants Administration, Attention Amy Hetrick, Room 3240, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Amy Hetrick, 202–606–6856 or by email at *PeerReviewers@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: CNCS External Reviewer Application.

OMB Control Number: 3045–0090.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 500.

Total Estimated Number of Annual Burden Hours: 250 hours (Average 30 minutes per response).

Abstract: The External Reviewer Application is used by individuals who wish to serve as External Reviewers or External Panel Coordinators for CNCS when external reviewers are needed to review grant applications. The information collected will be used by CNCS to select review participants for each grant competition. The information is collected electronically using CNCS's web-based system. CNCS seeks to renew the current information collection. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on December 31, 2019.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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. All written comments will be available for public inspection on *regulations.gov.*

Dated: August 12, 2019.

Amy Hetrick,

Office of Grants Administration.

[FR Doc. 2019–17515 Filed 8–14–19; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy.

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its *Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery,* OMB Control Number 1905–0210. This generic clearance enables EIA to collect customer and stakeholder feedback from the public on service delivery in an efficient and timely manner to ensure that EIA's programs effectively meet our customers' needs and to collect feedback on improving service delivery to the public.

DATES: Comments on this information collection must be received on or before September 16, 2019. If you anticipate any difficulties in submitting your comments by the deadline, contact the DOE Desk Officer at (202) 395–3093.

ADDRESSES: Written comments should be sent to:

EIA Desk Officer: Robert Sivinski, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503, *Robert_G_Sivinski@omb.eop.gov.*

And send a copy to:

Jacob Bournazian, U.S. Energy Information Administration, 1000 Independence Avenue SW, EI–21, *jacob.bournazian@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Jacob Bournazian, telephone: (202) 586–5562, email at *jacob.bournazian@eia.gov.*

SUPPLEMENTARY INFORMATION:

This information collection request contains

(1) *OMB No.* 1905–0210;

(2) *Information Collection Request Title:* Generic Clearance for the

Collection of Qualitative Feedback on Agency Service Delivery;

(3) *Type of Request:* Three-year extension;

(4) *Purpose:* This information collection activity provides a means to collect qualitative customer and stakeholder feedback in an efficient timely manner, in accordance with the Administration's commitment to improving service delivery. Qualitative feedback means data that provide useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback provides insights into customer or stakeholder perceptions, experiences, and expectations. It also provides an early warning of issues with service, or focuses attention on areas where communication, training or changes in operations might improve the accuracy of data report on survey instruments or the delivery of products or services. These collections allow for ongoing, collaborative and actionable communications between the agency and its customers and stakeholders. It also allows feedback to contribute directly to the improvement of program management. The solicitation of feedback on Agency Service Delivery includes topics such as: timeliness of publishing, understanding of questions and terminology used in EIA products, perceptions on data confidentiality and security, appropriateness and relevancy of information published, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses are assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. EIA will only submit a collection for approval under this generic clearance if it meets the following conditions:

- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, procedures outlined in Question 16 will be followed);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions;
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study;
- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future; and
- With the exception of information needed to provide remuneration for participants of focus groups and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained.

If these conditions are not met, EIA will submit an information collection request to OMB for approval through the normal PRA process. The solicitation of feedback on Agency Service Delivery includes topics such as: timeliness of publishing, understanding of questions and terminology used in EIA products, perceptions on data confidentiality and security, appropriateness and relevancy of information published, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses are assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. Advances in technology and service delivery systems in the private sector, have increased the public's expectations of the Government's customer service promise. The Federal Government has a responsibility to streamline and make more efficient its service delivery to better serve the public.

(5) *Annual Estimated Number of Respondents:* 241,800;

(6) *Annual Estimated Number of Total Responses:* 241,800;

(7) *Annual Estimated Number of Burden Hours:* 25,800;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no additional costs to respondents associated with these qualitative studies other than the costs associated with the burden hours. The cost of the burden hours is estimated to be $2,025,816 (25,800 burden hours times $78.52 per hour).

Statutory Authority E.O. 12862, Setting Customer Service Standards, E.O. 13571, Streamlining Service Delivery and Improving Customer Service.

Signed in Washington, DC on August 9, 2019.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2019–17496 Filed 8–14–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–31–000]

Commission Information Collection Activities (FERC–547); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–547 (Gas Pipeline Rates: Refund Report Requirements).

DATES: Comments on the collection of information are due October 15, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–31–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Gas Pipeline Rates: Refund Report Requirements.

OMB Control No.: 1902–0084.

Type of Request: Three-year extension of the FERC–547 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses FERC–547 (Gas Pipeline Rates: Refund Report Requirements) to implement the statutory refund provisions governed by Sections 4, 5 and 16 of the Natural Gas Act (NGA).[1] Sections 4 and 5 authorize the Commission to order a refund (with interest) for any portion of a natural gas company's increased rate or charge found to be unjust or unreasonable. Refunds may also be instituted by a natural gas company as a stipulation to a Commission-approved settlement agreement or a provision under the company's tariff. Section 16 of the NGA authorizes the Commission to prescribe rules and regulations necessary to administer its refund mandates. The Commission's refund reporting requirements are located in 18 CFR 154.501 and 154.502.

The Commission uses the data to monitor refunds owed by natural gas companies to ensure that the flow-through of refunds owed by these companies are made as expeditiously as possible and to assure that refunds are made in compliance with the Commission's regulations.

Type of Respondents: Natural gas companies.

Estimate of Annual Burden:[2] The Commission estimates the annual public reporting burden for the information collection as:

FERC–547: GAS PIPELINE RATES: REFUND REPORT REQUIREMENTS

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost[3] per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = (5)	(5) ÷ (1) = (6)
19	2	38	2 hrs.; $160	76 hrs.; $6,080	$160

[3] FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The cost figure is the FY2019 FERC average annual salary plus benefits ($167,091/year or $80/hour).

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 30, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17524 Filed 8–14–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1456–008; ER10–1933–006; ER10–2615–013; ER10–2934–014; ER10–2959–015; ER11–2335–014; ER11–3859–019; ER11–4634–008; ER14–1699–009; ER15–1457–008; ER15–748–005; ER16–999–009; ER17–436–007; ER18–920–004; ER19–464–001; ER19–967–002; ER19–968–002.

Applicants: Beaver Falls, L.L.C., Chambers Cogeneration, Limited Partnership, Dighton Power, LLC, Fairless Energy, L.L.C., Garrison Energy Center LLC, Greenleaf Energy Unit 1 LLC, Hazleton Generation LLC, Logan Generating Company, L.P., Manchester Street, L.L.C., Marco DM Holdings, L.L.C., Marcus Hook Energy, L.P., Milford Power, LLC, Plum Point Energy Associates, LLC, Plum Point Services Company, LLC, RockGen Energy, LLC, Syracuse, L.L.C., Vermillion Power, L.L.C.

Description: Notice of Change in Status of the SEG MBR Entities.

Filed Date: 8/8/19.

Accession Number: 20190808–5159.

Comments Due: 5 p.m. ET 8/29/19.

Docket Numbers: ER18–92–002.

Applicants: Carroll County Energy LLC.

Description: Report Filing: Refund Report to be effective N/A.

Filed Date: 8/8/19.

Accession Number: 20190808–5072.

Comments Due: 5 p.m. ET 8/29/19.

Docket Numbers: ER19–2556–000.

Applicants: TransCanyon DCR, LLC.

Description: § 205(d) Rate Filing: TransCanyon Gates Notice of Succession to be effective 7/9/2019.

Filed Date: 8/8/19.

Accession Number: 20190808–5090.

Comments Due: 5 p.m. ET 8/29/19.

Docket Numbers: ER19–2557–000.

Applicants: Missisquoi, LLC.

Description: Baseline eTariff Filing: Missisquoi, LLC MBR Tariff to be effective 8/9/2019.

Filed Date: 8/8/19.

Accession Number: 20190808–5113.

Comments Due: 5 p.m. ET 8/29/19.

Docket Numbers: ER19–2558–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX–KC Wind System Upgrade Agreement to be effective 7/18/2019.

Filed Date: 8/8/19.

Accession Number: 20190808–5114.

Comments Due: 5 p.m. ET 8/29/19.

Docket Numbers: ER19–2559–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–08–08_Tariff revisons for PRA Process Timeline to be effective 10/8/2019.

Filed Date: 8/8/19.

Accession Number: 20190808–5120.

Comments Due: 5 p.m. ET 8/29/19.

Docket Numbers: ER19–2560–000.

Applicants: Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: Niagara Mohawk Power Corp. Filing of Revised Market-Based Sales Tariff to be effective 10/9/2019.

Filed Date: 8/9/19.

Accession Number: 20190809–5060.

Comments Due: 5 p.m. ET 8/30/19.

[1] 15 U.S.C. 717–717w.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

Docket Numbers: ER19–2561–000.
Applicants: New England Power Company.
Description: § 205(d) Rate Filing: New England Power Filing of Revised Market-Based Sales Tariff to be effective 10/9/2019.
Filed Date: 8/9/19.
Accession Number: 20190809–5061.
Comments Due: 5 p.m. ET 8/30/19.

Docket Numbers: ER19–2562–000.
Applicants: Massachusetts Electric Company.
Description: § 205(d) Rate Filing: Massachusetts Electric Co. Filing of Revised Market-Based Sales Tariff to be effective 10/9/2019.
Filed Date: 8/9/19.
Accession Number: 20190809–5062.
Comments Due: 5 p.m. ET 8/30/19.

Docket Numbers: ER19–2563–000.
Applicants: The Narragansett Electric Company.
Description: § 205(d) Rate Filing: Narragansett Electric Co. Filing of Revised Market-Based Sales Tariff to be effective 10/9/2019.
Filed Date: 8/9/19.
Accession Number: 20190809–5063.
Comments Due: 5 p.m. ET 8/30/19.

Docket Numbers: ER19–2564–000.
Applicants: Hickory Run Energy, LLC.
Description: Baseline eTariff Filing: Market-Based Rates Application to be effective 10/9/2019.
Filed Date: 8/9/19.
Accession Number: 20190809–5066.
Comments Due: 5 p.m. ET 8/30/19.

Docket Numbers: ER19–2565–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: ISO–NE and NEPOOL; Filing re Import Transaction Requirement Updates to be effective 10/23/2019.
Filed Date: 8/9/19.
Accession Number: 20190809–5075.
Comments Due: 5 p.m. ET 8/30/19.

Docket Numbers: ER19–2566–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: WI Unscheduled Flow Mitigation Plan Rev 4 to be effective 10/9/2019.
Filed Date: 8/9/19.
Accession Number: 20190809–5104.
Comments Due: 5 p.m. ET 8/30/19.

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: August 9, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17531 Filed 8–14–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2423–031]

Great Lakes Hydro America, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Acceleration of License Term.

b. *Project No.:* P–2423–031.

c. *Date Filed:* July 12, 2019.

d. *Licensee:* Great Lakes Hydro America, LLC.

e. *Name and Location of Project:* Riverside Hydroelectric Project, located on the Androscoggin River, in the city of Berlin, Coos County, New Hampshire.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensee Contact Information:* Mr. Randy Dorman, Licensing Specialist, Brookfield Renewable, 150 Main Street, Lewiston, ME 04240, Phone: (207) 755–5605, Email: *Randy.Dorman@brookfieldrenewable.com.*

h. *FERC Contact:* Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests, is 45 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2423–031.

j. *Description of Proceeding:* Great Lakes Hydro America, LLC, licensee for the Riverside Hydroelectric Project filed a request to accelerate the current 40-year license term of the project, approximately nine years, from December 31, 2033 to July 31, 2024. The shortened license term would allow the licensee to align the expiration of the project license with that of seven other projects located nearby on the Androscoggin River, so that they could be relicensed concurrently. All eight projects are located within approximately 11 river miles of each other, in Coos County, New Hampshire.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–2423–031) excluding the last three digits in the docket number field to access the notice. 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 toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .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, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in

all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the request to accelerate the license term. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener 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. 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 18 CFR 4.34(b) and 385.2010.

Dated: August 9, 2019.

Kimberly Bose,

Secretary.

[FR Doc. 2019–17532 Filed 8–14–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0499; FRL–9997–96–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Industrial/Commercial/Institutional Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Industrial/Commercial/Institutional Steam Generating Units (EPA ICR Number 1088.15, OMB Control Number 2060–0072), to the Office of Management and Budget (OMB), for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2019. Public comments were previously requested via the **Federal Register** on May 6, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 16, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0499, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Industrial/Commercial/Institutional Steam Generating Units (40 CFR part 60, subpart Db) were proposed on June 19, 1986, promulgated on December 16, 1987, and most-recently amended on February 27, 2014. The amendment of 2014 promulgated technical and editorial corrections for source-testing of emission operations. The revisions did not result in any changes to either the reporting or recordkeeping requirements. These regulations apply to industrial/commercial/institutional steam generating units (boilers) that commenced either construction, or modification, or reconstruction after June 19, 1984, and have a heat input capacity from fuels combusted in the unit of greater than 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)). This information is being collected to assure compliance with 40 CFR part 60, subpart Db.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Owners and operators of industrial/commercial/institutional steam generating units (boilers) that commenced construction, modification, or reconstruction after June 19, 1984, and have a heat input capacity from fuels combusted in the unit of greater than 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)).

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Db).

Estimated number of respondents: 1,957 (total).

Frequency of response: Quarterly and semiannually.

Total estimated burden: 1,790,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $243,000,000 (per year), which includes $36,200,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an adjustment increase in the burden in this ICR compared to the previous ICR. The increase is based on an increase in the number of sources subject to the

NSPS due to continued growth in the industry.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–17525 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0450; FRL–9997–63]

Proposed Low-Priority Substance Designation Under the Toxic Substances Control Act (TSCA); Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required under section 6(b) of the Toxic Substances Control Act (TSCA) and implementing regulations, EPA is proposing to designate 20 chemical substances as Low-Priority Substances for which risk evaluation is not warranted at this time. This document provides a summary of the approach used by EPA to support the proposed designations, the proposed designation for each of the chemical substances, and instructions on how to access the chemical-specific information, analysis and basis used by EPA to make the proposed designation for each chemical substance. EPA is providing a 90-day comment period during which interested persons may provide comments on the proposed designations.

DATES: Comments must be received on or before November 13, 2019.

ADDRESSES: Use one of the following methods to submit comments: For comments not related to a specific chemical substance, including comments on EPA's Approach Document for Screening Hazard Information for Low-Priority Substances Under TSCA (July 2019), direct your comments to docket identification (ID) number EPA–HQ–OPPT–2019–0450. For comments on one or more of the 20 chemical substances, use the applicable chemical specific docket ID number(s) identified in Unit IV.B.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT:

For technical information about Low-Priority Substances contact: Lauren Sweet, Chemistry, Economics and Sustainable Strategies Division, Office of Pollution Prevention and Toxics, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency (Mailcode 7406M), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–0376; email address: *sweet.lauren@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.*

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to entities that currently or may manufacture (including import) a chemical substance regulated under TSCA (*e.g.,* entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). The action may also be of interest to chemical processors, distributors in commerce, and users; non-profit organizations in the environmental and public health sectors; state and local government agencies; and members of the public. Because interest in this notice may be broad, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

B. What action is the Agency taking?

EPA is proposing to designate 20 chemical substances as Low-Priority Substances pursuant to section 6(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(b). This document includes a summary of the approach used by EPA to support the proposed designations, the proposed designation for each of the chemical substances, and instructions on how to access the chemical-specific information, analysis and basis used by EPA to make the proposed designation for each chemical substance. EPA is providing a 90-day comment period during which interested persons may submit comments on the proposed designation.

C. Why is the Agency taking this action?

EPA is proposing to designate as Low-Priority Substances 20 chemical substances for which EPA initiated the prioritization process required by TSCA section 6(b) on March 21, 2019 (Ref. 1). EPA is providing a 90-day comment period during which the public may submit comments on EPA's proposed designations of Low-Priority Substances, as required by TSCA section 6(b)(1)(C)(ii).

D. What is the Agency's authority for taking this action?

This document is issued pursuant to TSCA section 6(b)(1).

E. What are the estimated incremental impacts of this action?

This document identifies 20 chemical substances for proposed designation as Low-Priority Substances. This document does not establish any requirements on persons or entities outside of the Agency. No incremental impacts are therefore anticipated, and consequently EPA did not estimate potential incremental impacts for this action.

F. What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

TSCA, as amended in 2016 by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114–182), at section 6(b)(1), requires EPA to prioritize chemical substances for designation. As required by TSCA section 6(b) and described in 40 CFR 702.7, on March 21, 2019 (Ref. 1), EPA initiated the prioritization process for 20 chemical substances identified as candidates for Low-Priority Substance designation.

Under TSCA section 6(b)(1)(B) and implementing regulations (40 CFR 702.3), a Low-Priority Substance is defined as a chemical substance that the Administrator concludes, based on information sufficient to establish, without consideration of costs or other non-risk factors, does not meet the standard for a High-Priority Substance. A High-Priority Substance is defined as a chemical substance that the Administrator concludes, without consideration of costs or other non-risk factors, may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator. A chemical substance designated as Low-Priority indicates a risk evaluation is not warranted at that time.

This document is intended to fulfill the requirement in TSCA section 6(b)(1)(C)(ii) and 40 CFR 702.9 that the Administrator propose the designation of 20 chemical substances as Low-Priority Substances for risk evaluation after conducting a screening review, as required by TSCA section 6(b)(1)(A) and 40 CFR 702.9(a). EPA generally used reasonably available information to screen the candidate chemical substances against the following criteria and considerations (40 CFR 702.9(a)):

- The chemical substance's hazard and exposure potential;
- the chemical substance's persistence and bioaccumulation;
- potentially exposed or susceptible subpopulations;
- storage of the chemical substance near significant sources of drinking water;
- the chemical substance's conditions of use or significant changes in conditions of use;
- the chemical substance's production volume or significant changes in production volume; and
- other risk-based criteria that EPA determines to be relevant to the designation of the chemical substance's priority for risk evaluation.

As described in 40 CFR 702.9(b), in conducting the screening review during the prioritization process, EPA considered sources of information relevant to the screening-review criteria as outlined in the statute (TSCA section 6(b)(1)(A)) and implementing regulations (40 CFR 702.9(a)) and consistent with the scientific standards of TSCA section 26(h). All hazard and fate information for these proposed low-priority substances was collected and evaluated in accordance with the methodology laid out in the Approach Document for Screening Hazard Information for Low-Priority Substances Under TSCA (July 2019) (Ref. 2). Information gathered according to this approach document was included in each chemical substance's screening review, which are provided in Unit IV.B. In addition, as required by 40 CFR 702.9, EPA considered the hazard and exposure potential of the chemical substances and did not consider cost or other non-risk factors in making a proposed priority designation.

III. Information and Comments Received

The initiation of the prioritization process (docket EPA–HQ–OPPT–2019–0131) included a 90-day comment period during which interested persons were able to submit relevant information on those chemical substances identified as candidates for Low-Priority Substance designation. With the exception of comments providing information for specific chemical substances being proposed as Low-Priority Substances, EPA will respond to comments received in an upcoming notice.

During the 90-day comment period, commenters submitted information on four chemical substances proposed for Low-Priority designation:

- *Propanol, [(1-methyl-1,2-ethanediyl)bis(oxy)]bis- (CAS RN 24800–44–0)*
- *Propanol, 1(or 2)-(2-methoxymethylethoxy)-, acetate (CAS RN 88917–22–0)*
- *Propanol, [2-(2-butoxymethylethoxy)methylethoxy]- (CAS RN 55934–93–5)*
- *Propanol, oxybis- (CAS RN 25265–71–8)*

The submitted information is addressed in the respective dossiers (see Unit IV.B.).

IV. Chemical Substances for Which EPA Is Proposing a Low-Priority Substance Designation for Prioritization

A. Approach for Gathering Information, Conducting Analysis and Forming the Basis To Support the Proposed Low-Priority Substance Designation

EPA used reasonably available information, including public comments received on specific chemical substances during the 90-day comment period following initiation of the prioritization process for Low-Priority Substances, to screen the candidate chemical substances against the criteria and considerations in TSCA section 6(b)(1)(A) and 40 CFR 702.9 (see Unit III.).

EPA developed a document to identify the information, analysis and basis used to support the proposed designations as a Low-Priority Substance for each chemical substance. These documents are available in the docket of each of the chemical substances with a proposed designation as a Low-Priority Substance. The proposed designations are presented in Unit IV.B., along with the docket references.

Each chemical-specific document for the chemical substances proposed for designation as a Low-Priority Substance includes the information, analysis and basis for the proposed designation. In the absence of experimental data for a given endpoint, EPA integrated information using New Approach Methodologies (NAMs). Each of the screening reviews includes an overview of the considerations in TSCA section 6(b)(1)(A) and the regulatory section addressing the criteria and considerations at 40 CFR 702.9:

1. *Hazard potential.* EPA considered reasonably available information to screen potential hazards for each chemical substance. EPA surveyed the reasonably available information for potential human health and environmental hazards for a range of toxicological endpoints. EPA benchmarked these data against low-concern thresholds. These low-concern endpoints and thresholds are based on EPA OPPT's New Chemicals Program, the Globally Harmonized System of Classification and Labelling of Chemicals classifications, OPPT's criteria for high production volume chemical categorization, EPA's Office of Pesticide Programs categories, and the International Agency for Research on Cancer's classifications.

2. *Exposure potential.* EPA gathered reasonably available information on physical-chemical properties, production volumes, and uses to

determine potential routes of exposure. Using this information, and adhering to methodologies outlined in each chemical-specific dossier, EPA screened for potential environmental, general population, and potentially exposed or susceptible subpopulations exposure for each chemical substance:

• For environmental exposures, EPA considered the conditions of use and fate properties of each chemical substance to anticipate its presence in different environmental media.

• For general population exposure, EPA considered releases from certain conditions of use, such as manufacturing, that may result in general population exposures via drinking water ingestion and/or inhalation from air releases.

• For exposures to potentially exposed or susceptible subpopulations, EPA identified subpopulations such as workers, consumers, pregnant women, and children using Chemical Data Reporting (CDR) information and other reasonably available information specified in each chemical substance's screening review. The CDR rule requires manufacturers to report information on the chemical substances they produce domestically or import into the U.S. CDR includes information on the manufacturing, processing, and use of chemical substances. For worker or occupational exposure, EPA identified the conditions of use that are likely to result in workers exposures, such as manufacturing, processing, industrial use, and commercial use. For consumer and children's exposures, EPA identified certain conditions of use that may result in the chemical substance's exposure to consumers and children.

3. *Persistence and bioaccumulation.* EPA considered reasonably available information on the chemical substance and interpreted persistence and bioaccumulation potential based on best available science. In the screening reviews, EPA presents a summary of the environmental fate characteristics of each chemical substance.

4. *Potentially exposed or susceptible subpopulations.* In the screening reviews, EPA considered reasonably available information to identify potentially exposed or susceptible subpopulations. At this stage, EPA analyzed information regarding children, infants, pregnant women, consumers, and workers:

• For children and infants, EPA evaluated the chemical substance's use in products and articles regulated under TSCA and intended for children using CDR information and other reasonably available information on uses. In the screening reviews, EPA presents information regarding those commercial and consumer uses where the chemical substance was used in products intended, known, or reasonably foreseen for use by children and infants.

• For pregnant women, EPA examined reasonably available information and considered whether the chemical substance could potentially pose reproductive or developmental adverse effects.

• For workers, EPA identified the potential for occupational exposures to workers based on the conditions of use of each chemical substance, using CDR information and other reasonably available information.

• For consumers, EPA identified the consumer uses of the chemical substance and the potential for consumer exposure under those conditions of use, using CDR information and other reasonably available information.

5. *Storage near significant sources of drinking water.* EPA evaluated elements of risk associated with the chemical substance's storage near surface and underground sources of drinking water. EPA considered possible adverse effects that could result from an accidental one-time-high-volume release of a substance, and from a slower release over time. For its analysis, EPA relied in large part on the chemical substance's potential human health hazards, including to potentially exposed or susceptible subpopulations, and environmental fate properties as they relate to the potential for the chemical substance to enter a hypothetical drinking water source. Among the reasons that EPA chose this approach for analysis is that data on storage of the chemicals being proposed as Low-Priority Substances are not tracked under TSCA and are not generally available. EPA also investigated whether the chemical substance was monitored for and detected in a range of environmental media under other federal statutes and regulations. EPA assumed that if a chemical substance is regulated under the National Primary Drinking Water Regulations or the Clean Water Act, or if its release is subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (ECPRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Clean Air Act (CAA), there is a potential human health hazard from a potential release near a significant source of drinking water.

6. *Conditions of use or significant changes in conditions of use.* EPA evaluated conditions of use or significant changes in conditions of use of the chemical substance by reviewing CDR data and supplementing that data from a broad range of other sources, including information from other governments, and information from publicly available internet sources to develop a comprehensive list of intended, known, and reasonably foreseen conditions of use within the TSCA regulatory scope. To analyze the potential for concern based on the possibility of change in known uses, EPA relied in large part on the chemical substance's potential human health and environmental hazards.

7. *Production volume or significant changes in production volume.* EPA considered current volume or significant changes in volume of the chemical substance using manufacturers' (including importers') reported information under the CDR rule under TSCA section 8(a). EPA assembled information from 1986 through 2016 on the production volume reported under the Inventory Update Rule (IUR) and CDR.

8. *Other risk-based criteria that EPA determined to be relevant to the designation of the chemical substance's priority.* EPA did not find other risk-based criteria relevant to the proposed designations of the candidate chemical substances as Low-Priority Substances.

B. Proposed Designation as Low-Priority Substances for Risk Evaluation

EPA is proposing to designate the following 20 chemical substances as Low-Priority Substances for which risk evaluation is not warranted at this time. The proposed designations are based on the conclusion that the chemical substance satisfies the definition of Low-Priority Substance. Under TSCA section 6(b)(1)(B) and implementing regulations (40 CFR 702.3), a Low-Priority Substance is described as a chemical substance that the Administrator concludes does not meet the standard for designation as a high-priority substance, based on information sufficient to establish that conclusion, without consideration of costs or other non-risk factors (Section 6(b)(1)(B)).

1. *1-Butanol, 3-methoxy-, 1-acetate, CAS RN 4435–53–4, Docket number: EPA–HQ–OPPT–2019–0106.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

2. *D-gluco-Heptonic acid, sodium salt (1:1), (2.xi.)-, CAS RN 31138–65–5, Docket number: EPA–HQ–OPPT–2019–0107.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance

are in the docket for this chemical substance.

3. *D-Gluconic acid, CAS RN 526–95–4, Docket number: EPA–HQ–OPPT–2019–0108.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

4. *D-Gluconic acid, calcium salt (2:1), CAS RN 299–28–5, Docket number: EPA–HQ–OPPT–2019–0109.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

5. *D-Gluconic acid, .delta.-lactone, CAS RN 90–80–2, Docket number: EPA–HQ–OPPT–2019–0110.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

6. *D-Gluconic acid, potassium salt (1:1), CAS RN 299–27–4, Docket number: EPA–HQ–OPPT–2019–0111.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

7. *D-Gluconic acid, sodium salt (1:1), CAS RN 527–07–1, Docket number: EPA–HQ–OPPT–2019–0112.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

8. *Decanedioic acid, 1,10-dibutyl ester, CAS RN 109–43–3, Docket number: EPA–HQ–OPPT–2019–0113.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

9. *1-Docosanol, CAS RN 661–19–8, Docket number: EPA–HQ–OPPT–2019–0114.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

10. *1-Eicosanol, CAS RN 629–96–9, Docket number: EPA–HQ–OPPT–2019–0115.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

11. *1,2-Hexanediol, CAS RN 6920–22–5, Docket number: EPA–HQ–OPPT–2019–0116.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

12. *1-Octadecanol, CAS RN 112–92–5, Docket number: EPA–HQ–OPPT–2019–0117.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

13. *Propanol, [2-(2-butoxymethylethoxy)methylethoxy]-, CAS RN 55934–93–5, Docket number: EPA–HQ–OPPT–2019–0118.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

14. *Propanedioic acid, 1,3-diethyl ester, CAS RN 105–53–3, Docket number: EPA–HQ–OPPT–2019–0119.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

15. *Propanedioic acid, 1,3-dimethyl ester, CAS RN 108–59–8, Docket number: EPA–HQ–OPPT–2019–0120.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

16. *Propanol, 1(or 2)-(2-methoxymethylethoxy)-, acetate, CAS RN 88917–22–0, Docket number: EPA–HQ–OPPT–2019–0121.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

17. *Propanol, [(1-methyl-1,2-ethanediyl)bis(oxy)]bis-, CAS RN 24800–44–0, Docket number: EPA–HQ–OPPT–2019–0122.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

18. *2-Propanol, 1,1'-oxybis-, CAS RN 110–98–5, Docket number: EPA–HQ–OPPT–2019–0123.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

19. *Propanol, oxybis-, CAS RN 25265–71–8, Docket number: EPA–HQ–OPPT–2019–0124.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

20. *Tetracosane, 2,6,10,15,19,23-hexamethyl-, CAS RN 111–01–3, Docket number: EPA–HQ–OPPT–2019–0125.* The information, analysis and basis used to support the proposed designation as Low-Priority Substance are in the docket for this chemical substance.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Initiation of Prioritization Under the Toxic Substances Control Act (TSCA). Notice. **Federal Register**. (84 FR 10491, March 21, 2019) (FRL–9991–06).
2. EPA. Approach Document for Screening Hazard Information for Low-Priority Substances Under TSCA. August 2019. EPA Document ID No. 740B19008. Office of Pollution Prevention and Toxics. Washington, DC.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: August 9, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–17558 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0680; FRL–9996–81–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines and Compliance Times for Existing Municipal Solid Waste Landfills (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Emission Guidelines and Compliance Times for Existing Municipal Solid Waste Landfills (EPA ICR Number 1893.08, OMB Control Number 2060–0430), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through August 31, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden

and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 16, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0680, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of municipal solid waste landfills are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as the applicable standards in 40 CFR part 60, subpart Cc and 40 CFR part 62 Subpart GGG. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Owners and operators of privately-owned and publicly-owned municipal solid waste landfills, as well as for State and local agencies administering the State Plans.

Respondent's obligation to respond: Mandatory (40 CFR part 60 subpart Cc and 40 CFR part 62 subpart GGG).

Estimated number of respondents: 493 (total).

Frequency of response: Annually and occasionally.

Total estimated burden: 6,520 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $449,000 (per year), which includes $0 for annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is a decrease in both the burden hours and the Capital/O&M costs in this ICR as compared to the previous ICR. The change in burden and cost estimates occurred as a result of the reporting in both the 2016 NSPS (40 CFR part 60, subpart XXX) and Emissions Guidelines (40 CFR part 60, subpart Cf). Most of the burdens previously attributed to the ICR for Subpart Cc and Subpart WWW have been accounted for in the 2016 ICRs for Subpart XXX (OMB Control Number 2060–0697) and Subpart Cf (OMB Control Number 2060–0720) to avoid duplication of burden for identical requirements.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–17527 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0658; FRL–9997–27–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants (EPA ICR Number 1160.14, OMB Control Number 2060–0114), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2019. Public comments were previously requested, via the **Federal Register,** on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 16, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0658, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's

public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A and 40 CFR part 60, subpart A), as well as for the specific requirements at 40 CFR part 63, subpart NNN and 40 CFR part 60 Subpart PPP. This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Wool fiberglass insulation manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart PPP and 40 CFR part 63, subpart NNN).

Estimated number of respondents: 42 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 8,450 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,580,000 (per year), which includes $622,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an adjustment decrease in the total estimated burden for Subpart NNN as currently identified in the OMB Inventory of Approved Burdens; this decrease is not due to any program changes. The decrease in the burden is due to the removal of burden from startup, shutdown, and malfunction reporting requirements that were removed in the July 2015 rule. Therefore, there were decreases in the respondent labor hours and number of responses. Labor rates were updated for Subpart NNN. There is no change in the total estimated burden for Subpart PPP as currently identified in the OMB Inventory of Approved Burdens.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–17526 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2019–0472; FRL–9998–27–Region 9]

Official Release of EMFAC2017 Motor Vehicle Emission Factor Model for Use in the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is approving and announcing the availability of the latest version of the California EMFAC (short for EMission FACtor) model for use in state implementation plan (SIP) development and transportation conformity in California. EMFAC2017 is the latest update to the EMFAC model for use by California state and local governments to meet Clean Air Act (CAA) requirements. The new model, which is based on new and improved data, calculates air pollution emissions factors for passenger cars, trucks, motorcycles, motor homes and buses. Today's notice also sets the date after which EMFAC2017, rather than EMFAC2014, must be used to satisfy the requirement that conformity determinations be based on the latest emissions model available. This requirement can be met by using the most current version of the motor vehicle emissions model approved by the EPA. Since the EMFAC model is used only in California, the EPA's approval and the announcement of the availability of the model does not affect the applicability of the Motor Vehicle Emissions Simulator (MOVES) model for users in other states.

DATES: The EPA's approval of the EMFAC2017 emissions model for SIP and conformity purposes is effective August 15, 2019. EMFAC2017 must be used as described in this Notice for all new regional emissions analyses for transportation conformity purposes that are started on or after August 16, 2021 and for all new carbon monoxide (CO) and particulate matter (PM_{10} and $PM_{2.5}$) hot-spot analyses that are started on or after August 17, 2020.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, *oconnor.karina@epa.gov,* (775) 434–8176, Air Planning Office (AIR–2), Air and Radiation Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

SUPPLEMENTARY INFORMATION: Copies of the official version of the EMFAC2017 model, including technical support documents, are available on the California Air Resources Board (CARB) website: *http://www.arb.ca.gov/msei/categories.htm#onroad_motor_vehicles.*

Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

I. Background

A. What is the EMFAC model?

The EMFAC model is a computer model that can estimate emissions rates for on-road mobile sources (''motor vehicles'') for calendar years 2000 to 2050 operating in California. Pollutant emissions for hydrocarbons (HC), CO, nitrogen oxides (NO_X), PM_{10}, $PM_{2.5}$, carbon dioxide (CO_2), and sulfur oxides are output from the model. Emissions are calculated for over forty different vehicle classes composed of passenger cars, various types of trucks and buses, motorcycles, and motor homes.

EMFAC is used to calculate current and future inventories of motor vehicle emissions at the state, air district, air basin, county, or project level. EMFAC contains default vehicle activity data, and the option of modifying that data, so it can be used to estimate a motor vehicle emissions inventory in tons per day for a specific year, month, or season, and as a function of ambient temperature, relative humidity, vehicle population, mileage accrual, miles of travel and speeds. Thus, the model can be used to make decisions about air pollution policies and programs at the local or state level.

Inventories based on EMFAC are also used to meet the SIP and transportation conformity requirements under the CAA. Transportation conformity is required under CAA section 176(c) to ensure that federally supported transportation plans, transportation improvement programs (TIPs), and highway and transit projects are consistent with (''conform to'') the purpose of the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS) or interim milestones. The EPA's transportation conformity regulations (40 CFR parts 51.390 and 93) describe how federally funded and approved highway and transit projects meet these statutory requirements. EMFAC is used statewide in all regional emissions analyses and CO, PM_{10} and $PM_{2.5}$ hot-spot analyses for transportation conformity determinations in California.

B. What versions of EMFAC are currently in use in California?

Most SIPs in California were developed using EMFAC2014 (released by CARB in December 2014) or EMFAC2011 (released by CARB in September 2011). The EPA approved and announced the availability of EMFAC2014 on December 14, 2015 (80 FR 77337) and approved and announced the availability of EMFAC2011 on March 16, 2013 (78 FR 14533) for all nonattainment and maintenance areas in California.

EMFAC2014 was considered a major update to previous versions of EMFAC and most SIPs in California were updated with EMFAC2014 in the 2015–2018 timeframe. EMFAC2014 included a new model structure, new data and methodologies regarding calculation of motor vehicle emissions, and revisions to implementation data for control measures.

C. Why is the EPA announcing its approval of the EMFAC model?

CAA section 172(c)(3) and 40 CFR 51.114(a) require that SIP inventories be based on the most current, accurate, and applicable models that are available at the time the SIP is developed. CAA section 176(c)(1) and 40 CFR 93.111(a) require that the latest emissions estimates be used in conformity analyses. The EPA approves models that fulfill these requirements.

Under 40 CFR 93.111(a), the EPA must approve new versions of EMFAC for SIP purposes before they can be used in transportation conformity analyses. In a July 20, 2018 letter, CARB requested that the EPA approve EMFAC2017 for use in developing SIPs and in determining conformity in California.[1] As described further below, EMFAC2017 is a significant change from previous EMFAC models and can calculate motor vehicle emissions for all areas in California. EMFAC2017 is being approved as the latest emissions model for statewide use in SIP development and emissions analyses for conformity purposes. Because the EMFAC model is only used in California, the EPA's statewide approval of the model does not affect the applicability of the MOVES emissions factor model for users in other states.

II. EPA Action

A. What version of EMFAC is the EPA approving?

In this notice, the EPA is approving and announcing that EMFAC2017 is available to use in statewide California SIP development and for regional emissions analyses, and CO, PM_{10} and $PM_{2.5}$ hot-spot analyses for transportation conformity. EMFAC2017 was developed by CARB and transmitted for approval to the EPA on July 20, 2018.[2]

The EMFAC2017 model uses the same structure, using Python and MySQL software, as EMFAC2014. This structure was developed to allow CARB to incorporate updated regulations and emissions data into the model and provide for a simplified user experience. The model is operated in either the Emissions Mode or the Emissions Rate Mode for regional emissions analyses to access emissions databases and vehicle activity data for the appropriate geographic subarea. EMFAC2017 also includes the Project-Level Assessment (EMFAC2017–PL) feature, which is available when EMFAC2017 is run in Emissions Rate Mode. The design of this part of EMFAC has not significantly changed from EMFAC2014. When using EMFAC2017–PL, emissions rates are estimated based on user-specified, project-specific conditions. An updated handbook for using EMFAC2017 at the project level is available from CARB at: *https://www.arb.ca.gov/msei/downloads/emfac2017-volume-ii-pl-handbook.pdf.* EMFAC2017 allows users to run one model for SIP inventories, regional emissions analyses, and project analyses.

B. What analyses can EMFAC2017 be used for?

The EPA is approving the model to estimate regional emissions of HC, CO, NO_X, PM_{10}, $PM_{2.5}$, and sulfur oxides.[3] However, EMFAC2017 will only be used in transportation conformity for pollutants and precursors that are transportation-related emissions, *e.g.,* HC, CO, NO_X, PM_{10} and $PM_{2.5}$.

The EPA is also approving EMFAC2017 to estimate CO, PM_{10} and $PM_{2.5}$ emissions for conformity hot-spot analyses involving individual transportation projects. A hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to the relevant NAAQS. This analysis is conducted on a smaller scale than a nonattainment or maintenance area, *e.g.,* for a congested roadway intersection. Hot-spot analyses are completed for only certain types of transportation projects; see 40 CFR 93.123(a) and (b) for further information.

The EPA also notes that today's approval action does not affect the methodology required for calculating re-entrained road dust for PM_{10} and $PM_{2.5}$ SIPs and transportation conformity analyses. Estimates for PM_{10} and $PM_{2.5}$ in EMFAC2017 do not include such emissions. When applicable, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas are required to use the EPA's AP–42 road dust method for calculating road dust emissions, unless a local method is approved in advance by the EPA.[4] In addition, EMFAC2017 does not estimate ammonia emissions. Air quality and transportation agencies should contact the EPA Regional Office if ammonia emissions estimates are needed for SIPs or regional conformity emissions analyses.

C. Why does the EPA consider EMFAC2017 to be a major update to EMFAC?

EMFAC2017 includes new data and significant changes to the methodologies regarding calculation of motor vehicle emissions and revisions to implementation data for control measures. EMFAC2017 includes updated emissions factors and data on car and truck activities, and emissions reductions associated with new regulations supporting new estimates of emissions from heavy-heavy duty diesel trucks and buses.[5] New emissions factor data was developed based on data from EPA's In-Use Vehicle Program, CARB's Vehicle and Truck and Bus Surveillance Programs, CARB's PEMs and Transit Bus testing and Integrated Bus Information Systems of West Virginia and Altoona. Motor vehicle fleet age, vehicle types and vehicle population

[1] The EMFAC2017 model and supporting information is available for downloading at *http://www.arb.ca.gov/msei/categories.htm#onroad_motor_vehicles.* Technical documentation explaining the changes to the model and the technical foundations for the model is available at *https://ww3.arb.ca.gov/msei/downloads/emfac2017-volume-iii-technical-documentation.pdf.*

[2] EMFAC2017, v1.0.2 (March 1, 2018 release).

[3] The EPA notes that EMFAC2017 can be used for CO_2 emissions analyses as well, but there are no SIP or transportation conformity requirements for greenhouse gases (GHGs). In addition, although SO_2 is listed as a potential precursor for $PM_{2.5}$ formation in 40 CFR 93.102(b)(2)(v), this precursor has not been considered significant for the on-road mobile sources covered by transportation conformity in California to date.

[4] For further information, see the EPA's February 4, 2011 Notice of Availability for the January 2011 AP–42 Method for Estimating Re-entrained Road Dust from Paved Roads (76 FR 6328). Also, for using AP–42 for unpaved roads, see the EPA's August 2, 2007 memorandum, ''Policy Guidance on the Use of the November 1, 2006, Update to AP–42 for Re-entrained Road Dust for SIP Development and Transportation Conformity.''

[5] Regulations include the Federal Phase 2 Greenhouse Gas Standards, California Senate Bill 1 which impacts compliance assumptions in EMFAC2017 for CARB's Truck and Bus Regulation and Updates to CARB's Advanced Clean Cars regulations from CARB's 2017 Midterm review.

have also been updated based on 2013–2016 California Department of Motor Vehicle (DMV) data, International Registration Plan (IRP) data, Truck Regulation Upload, Compliance, and Reporting System (TRUCRS) data, Port Vehicle Identification Number (VIN) data, California Highway Patrol School Bus Inspections and National Transit Database information. Each of these changes affect emissions factors for each area in California. The EMFAC2017 model interface and overall design has not significantly changed as compared to EMFAC2014. CARB's website describes these and other model changes at: *https://ww3.arb.ca.gov/msei/msei.htm.*

D. How were stakeholders and the public involved in the EMFAC development process?

Since 2017, CARB has held a series of public workshops to discuss emissions inventory updates and EMFAC updates and to receive comments on the resulting changes in the emissions inventory and models.[6] CARB also conducted beta testing of interim versions of the model with air districts and Metropolitan Planning Organizations (MPOs). Stakeholders and other members of the public had the opportunity to request briefings with CARB staff and provide them with comments and suggestions to improve the model. CARB also developed and posted training modules for EMFAC2017 and supports a mobile source emissions inventory email listserv to announce updates and changes to the EMFAC supporting material.[7]

CARB also made available to the public a technical document that describes updates to the model and public presentations that summarize the changes from earlier versions of the model. The technical documentation and presentations are available on CARB's website at: *https://www.arb.ca.gov/msei/categories.htm.*

Specific changes incorporated into the EMFAC2017 model are also discussed in *https://www.arb.ca.gov/msei/downloads/emfac2017-volume-iii-technical-documentation.pdf.* All presentations from the public workshops are available on the CARB website at: *http://www.arb.ca.gov/msei/workshop-meetings.htm.*

[6] See *http://www.arb.ca.gov/msei/workshop-meetings.htm.*

[7] To subscribe to CARB's listserv for Mobile Source Emission Inventory development, see ''Join our MSEI listserv'' at *https://www.arb.ca.gov/msei/categories.htm#onroad_motor_vehicles.*

E. Does this notice establish a transportation conformity grace period for the use of this model?

The transportation conformity rule (40 CFR 93.111) requires that conformity determinations be based on the latest motor vehicle emissions model approved by the EPA for SIP purposes for a state or area. Section 176(c)(1) of the CAA states that

> ''. . . [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates. . . .''

When the EPA approves and announces the availability of a new emissions model such as EMFAC2017, the EPA will consult with the U.S. Department of Transportation (DOT) to establish a grace period before the model is required for conformity analyses (40 CFR 93.111(b)). The conformity rule provides for a grace period for new emissions models of between 3 and 24 months after notice of availability is published in the **Federal Register** (40 CFR 93.111(b)(1)).

The EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (November 24, 1993, 58 FR 62211):

''EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs must use the model's new emissions factors.''

In consultation with the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), the EPA considers ''the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity'' in establishing the length of the grace period (40 CFR 93.111(b)(2)).

Upon consideration of these factors, the EPA is establishing a two-year grace period before EMFAC2017 is required for all new HC, NO_X, PM_{10}, $PM_{2.5}$ and CO regional emissions analyses (*e.g.,* supporting transportation plan and TIP conformity determinations).

The grace period for regional emissions analyses begins on August 15, 2019 and ends on August 16, 2021. Areas have the option of using the new model for regional emissions analyses prior to the end of the grace period.

Upon consideration of the transportation conformity rule's factors, the EPA is also establishing a one-year grace period before EMFAC2017 is required in conformity analyses for all new CO, PM_{10} and $PM_{2.5}$ hot-spot analyses supporting project-level conformity determinations.

The grace period for hot-spot analyses begins on August 15, 2019 and ends on August 17, 2020. Areas have the option of using the new model for hot-spot analyses prior to the end of the grace period.

As discussed earlier in the notice, EMFAC2017 incorporates significant changes to the emissions and vehicle fleet data assumptions used to estimate emissions for regional emissions analysis. In addition to incorporating the new EMFAC2017 emissions rate and fleet data, state and local agencies also need to consider how the model affects regional conformity analysis results and whether SIP and/or transportation plan/TIP changes are necessary to assure future conformity determinations. As stated earlier in the notice, the changes to EMFAC affect emissions factors for each area in California. CARB has requested a 24-month grace period to allow them to update SIPs previously developed using EMFAC2011 or EMFAC2014 with the updated emissions from EMFAC2017. CARB anticipates that 24 months are needed to develop and submit revised SIPs based on EMFAC2017. The EPA agrees that additional time is necessary for CARB to revise previously approved SIPs with EMFAC2017 and complete the SIP revision process so that MPOs can incorporate revised SIP motor vehicle emission budgets (''budgets'') into the transportation conformity process.

For application of EMFAC2017 at the project level, the application of EMFAC2017 and the model's overall design and interface are similar to EMFAC2014. As a result, project sponsors developing future hot-spot analyses for projects that require such analyses in CO and PM nonattainment and maintenance areas that have already used EMFAC2014 should not need significant time to familiarize themselves with this model.[8] In addition, the fact that time may be needed for revising SIPs or transportation plans/TIPs due to the emissions factor changes in EMFAC2017 is irrelevant for hot-spot analyses, because hot-spot analyses do not rely upon such planning documents. But while EMFAC2017's model design and interface has not significantly changed from EMFAC2014, project

[8] EPA is not providing new or updated hot-spot training or guidance for hot-spot analyses due to EMFAC2017.

sponsors may still need some time to familiarize themselves with CARB's updated EMFAC2017–PL handbook and consider technical resource allocation issues to incorporate EMFAC2017 into any future hot-spot analyses in multiple CO, PM_{10}, and $PM_{2.5}$ nonattainment and maintenance areas across California.

Therefore, it is appropriate to set a one-year grace period to allow all areas in California to incorporate EMFAC2017 in conformity hot-spot analyses for required project types and apply the updated planning assumptions incorporated in EMFAC2017 in a timely manner. In the interim, new PM and CO hot-spot analyses that are started prior to the end of the EMFAC2017 grace period can be based on (40 CFR 93.111(c)).[9]

When the regional emissions analysis grace period ends on August 16, 2021, EMFAC2017 will become the only approved motor vehicle emissions model for all new regional transportation conformity analyses in California for meeting the requirement to use the latest emissions information in conformity analyses. In general, this means that all new HC, NO_X, PM_{10}, $PM_{2.5}$, and CO regional conformity analyses started after the end of the two-year grace period must be based on EMFAC2017, even if the SIP is based on an earlier version of the EMFAC model.

In addition, in most cases, if an area revises previously approved EMFAC2014-based SIP budgets using EMFAC2017, the revised EMFAC2017 budgets would be used for conformity purposes once the EPA approves the SIP revision. In general, the EPA will not make adequacy findings for these SIPs because submitted SIPs cannot supersede approved budgets until they are approved. However, 40 CFR 93.118(e)(1) allows an approved budget to be replaced by an adequate budget if the EPA's approval of the initial budgets specifies that the budgets being approved may be replaced in the future by new adequate budgets. This flexibility has been used in limited situations in the past, such as during the transition from EMFAC7F and EMFAC7G to EMFAC2002.[10] In such cases, the EMFAC2017-based budgets would be used for conformity purposes once they have been found adequate. California air agencies should consult with the EPA as needed to determine if this flexibility applies.

When the hot-spot analysis grace period ends on August 17, 2020, EMFAC2017 will become the only approved motor vehicle emissions model for all new hot-spot transportation conformity analyses for required project types across California for meeting the requirement to use the latest emissions information in conformity. In general, this means that all new CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses started after the end of the one-year grace period must be based on EMFAC2017 rather than EMFAC2014.

F. Can areas use EMFAC2014 during the grace period?

The conformity rule provides some flexibility for regional emissions analyses that are started before the end of the grace period. Analyses that begin before or during the grace period may continue to rely on EMFAC2014. The inter-agency consultation process should be used if it is unclear if an EMFAC2014-based analysis was begun before the end of the 24-month grace period. When the grace period ends, EMFAC2017 will become the EPA-approved motor vehicle emissions model for regional emissions analyses for transportation conformity in California.

CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses for project-level conformity determinations can be based on EMFAC2014 if the analysis was begun before the end of the 12-month grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.[11] Quantitative analysis already underway that was started before the end of the grace period using EMFAC2014 can be completed as long as 40 CFR 93.111(c) is satisfied. The inter-agency consultation process should be used if it is unclear whether an EMFAC2014-based analysis is covered by the circumstances described in the transportation conformity rule.

G. Future Updates to EMFAC

On January 31, 2006, CARB submitted a letter to the EPA and to the California Division of the FHWA indicating the State's intention to make future revisions to update EMFAC. These EMFAC updates would reflect, among other new information, updated vehicle fleet data every three years. In California, MPOs and Air Districts cannot update vehicle fleet data embedded into EMFAC, only CARB can update the fleet data with each new EMFAC update because of the model design. The EPA's July 2004 final rule (69 FR 40004) states that new vehicle registration data must be used when it is available prior to the start of new conformity analyses and that states and MPOs are strongly encouraged to update the data at least every five years as described in guidance issued December 2008 by the EPA and DOT.[12] CARB's next update to the planning assumptions in EMFAC is expected in 2020.

III. Summary of EPA Actions

As described in this notice, the EPA is approving and announcing the availability of EMFAC2017 as submitted by CARB on July 20, 2018 with the following limitations and conditions:

(1) The approval is limited to California,

(2) The approval is Statewide and applies to estimation of emissions of HC, CO, NO_X, PM_{10}, $PM_{2.5}$, and sulfur oxides. In addition, EMFAC2017 will be used in transportation conformity regional emissions analyses for pollutants and precursors that are applicable in a given nonattainment or maintenance area. The EPA is approving the emissions factor elements of EMFAC2017, but not the associated default travel activity (*e.g.* Vehicle Miles Traveled).

(3) A 24-month statewide transportation conformity regional grace period will be established beginning August 15, 2019 and ending August 16, 2021 for the transportation conformity uses described in (2) above.

(4) The EPA is also approving EMFAC2017's Emission Rate Mode that allows the model to estimate project-level emissions for CO, PM_{10}, and $PM_{2.5}$ conformity hot-spot analyses.

(5) A 12-month statewide transportation conformity hot-spot grace period will be established beginning August 15, 2019 and ending August 17, 2020 for the transportation conformity uses described in (4) above.

Dated: August 6, 2019.

Michael Stoker,

Regional Administrator, EPA Region IX.

[FR Doc. 2019–17476 Filed 8–14–19; 8:45 am]

BILLING CODE 6560–50–P

[9] See web page *http://www3.epa.gov/otaq/stateresources/transconf/projectlevel-hotspot.htm#pm-hotspot* for latest guidance documents and information.

[10] See 67 FR 46618 (July 16, 2002); 67 FR 69139 (November 15, 2002); and 68 FR 15720 (April 1, 2003).

[11] 40 CFR 93.111(c).

[12] For more information on qualitative PM hot-spot analyses, see the EPA and DOT's joint ''Guidance for The Use of Latest Planning Assumptions in Transportation Conformity Determinations'' (EPA420–B–08–901, December 2008).

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, August 20, 2019 at 10:00 a.m. and its continuation at the conclusion of the open meeting on August 22, 2019.

PLACE: 1050 First Street NE, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2019–17625 Filed 8–13–19; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Nancy Rigler as trustee of the Nancy Rigler Trust; the Nancy Rigler Trust, both of De Kalb, Illinois; John P. Rigler II as trustee of the John P. Rigler II Trust; the John P. Rigler II Trust, both of New Hampton, Iowa; John P. Rigler III, personally and as trustee of the John P. Rigler III Trust; the John P. Rigler III Trust, both of Urbandale, Iowa; David A. Rigler, personally and as trustee of the David A. Rigler Trust; the David A. Rigler Trust, both of Waukee, Iowa; Hannah Rigler, personally and as trustee of the Hannah Rigler Trust; the Hannah Rigler Trust; both of Iowa City, Iowa; Joi Povlsen Dundas, personally and as trustee of the Nancy Rigler Family Irrevocable Trust FBO Joi Dundas; the Nancy Rigler Family Irrevocable Trust FBO Joi Dundas, both of Stillman Valley, Illinois; altogether with Paul Kristian Povlsen IV, personally and as trustee of the Nancy Rigler Family Irrevocable Trust FBO Paul Kristian Povlsen IV; the Nancy Rigler Family Irrevocable Trust FBO Paul Kristian Povlsen IV, both of Flagstaff, Arizona;* as a group acting in concert to join the Rigler Family Control Group to retain shares of Rigler Investment Company, and thereby indirectly retain shares of Green Circle Investments Inc. and Peoples Bank, all of Clive, Iowa.

Board of Governors of the Federal Reserve System, August 12, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–17545 Filed 8–14–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10305 and 10105]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 16, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies

to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision with change of a previously approved collection; *Title of Information Collection:* Medicare Part C and Part D Data Validation (42 CFR 422.516g and 423.514g); *Use:* The Centers for Medicare and Medicaid Services (CMS) established reporting requirements for Medicare Part C and Part D sponsoring organizations (Medicare Advantage Organizations [MAOs], Cost Plans, and Medicare Part D sponsors) under the authority described in 42 CFR 422.516(a) and 423.514(a), respectively. Under these reporting requirements, each sponsoring organization must submit Medicare Part C, Medicare Part D, or Medicare Part C and Part D data. In order for the reported data to be useful for monitoring and performance measurement, the data must be reliable, valid, complete, and comparable among sponsoring organizations. To maintain the independence of the validation process, sponsoring organizations do not use their own staff to conduct the data validation. Sponsoring organizations are responsible for hiring external, independent data validation contractors (DVCs) who meet a minimum set of qualifications and credentials, which CMS outlines in the ''Standards for Selecting Data Validation Contractors'' document. For the retrospective review in 2020, the DVCs will review data submitted by sponsoring organizations for CY2019. *Form Number:* CMS–10305 *(*OMB control number: 0938–1115*); Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; Number of Respondents:553*; Total Annual Responses:* 553*; Total Annual Hours:* 15,332. (For policy questions regarding this collection contact Maria Sotirelis at 410–786–0552.)

2. *Type of Information Collection Request:* Extension without change of a previously approved collection; *Title of Information Collection:* National Implementation of the In-Center Hemodialysis CAHPS Survey; *Use:* The Centers for Medicare & Medicaid Services (CMS) is requesting clearance from the Office of Management and Budget (OMB) to continue the In-center Hemodialysis CAHPS (ICH CAHPS) Survey to measure patients' experience of care with in-center hemodialysis (ICH) facilities. Data collected in the national implementation of the ICH CAHPS Survey are used for the following purposes: To provide a source of information from which selected measures can be publicly reported to beneficiaries as a decision aid for dialysis facility selection; to aid facilities with their internal quality improvement efforts and external benchmarking with other facilities; to provide CMS with information for monitoring and public reporting purposes; and to support the ESRD value-based purchasing program. *Form Number:* CMS–10105 (OMB control number 0938–0926); *Frequency:* Occasionally; *Affected Public:* State, Local, and Tribal Governments; *Number of Respondents:* 108,800; *Total Annual Responses:* 108,800; *Total Annual Hours:* 58,753. (For policy questions regarding this collection contact Julia Zucco at 410–786–6677.)

Dated: August 9, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–17495 Filed 8–14–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10434]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 16, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid and CHIP Program (MACPro); *Use:* The MACPro system is being transitioned to become the system of record that will be used by both state and CMS officials to: Improve the state application and federal review processes, improve federal program management of Medicaid programs and CHIP, and standardize Medicaid program data. Specifically, it will be used by state agencies to: Submit and amend Medicaid state plans, CHIP state plans and ADPs (Information System Advanced Planning Documents); submit applications and amendments for state waivers, demonstrations, and benchmark and grant programs; and submit reporting data. Among the collections submitted for approval under MACPro will be relevant collections that are currently approved under our generic umbrella information collection request (CMS–10398; OMB control number 0938–1148), certain collections approved as a regular stand-alone information collections, and upcoming collections. A list of those collections is included in our PRA package. *Form Number:* CMS–10434 (OMB control number: 0938–1188); *Frequency:* Monthly, yearly, quarterly, semi-annually, once, or occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 3,360; *Total Annual Hours:* 96,844. (For policy questions regarding this collection contact Annette Pearson at 410–786–6858).

Dated: August 12, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–17563 Filed 8–14–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–282, CMS–10638, and CMS–10338]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 15, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of the following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–282 Health Plan Appeals and Grievance Data Collection and Reporting Requirements, Data Disclosure Requirements under section 422.111.

CMS–10638 Application for New Medical Services and Technologies Seeking to Qualify for Add-On Payments Under the Hospital Inpatient Prospective Payment System.

CMS–10338 Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers.

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Health Plan Appeals and Grievance Data Collection and Reporting Requirements, Data Disclosure Requirements under section 422.111; *Use:* Part 422 of Title 42 of the Code of Federal Regulations (CFR) distinguishes between certain information a Medicare Advantage (MA) organization must provide to each enrollee (on an annual basis) and information that the MA organization must disclose to any MA eligible individual (upon request). This requirement can be found in § 1852(c)(2)(C) of the Social Security Act

and in 42 CFR 422.111(c)(3) which states that MA organizations must disclose information pertaining to the number of disputes, and their disposition in the aggregate, with the categories of grievances and appeals, to any individual eligible to elect an MA organization who requests this information.

The appeals and grievance data form is an OMB approved form for use by Medicare Advantage organizations to disclose grievance and appeal data, upon request, to individuals eligible to elect an MA organization. By utilizing the form, MA organizations will meet the disclosure requirements set forth in regulations at 42 CFR 422.111(c)(3).

In an effort to identify opportunities to reduce burden for this collection, we compared data provided by plans to CMS in Part C reporting requirements (OMB 0938–1054) with the requirements to provide aggregate grievance and appeals data to MA eligible beneficiaries. We found that data reported to CMS in the Part C reporting requirements was data that would meet the disclosure requirements at § 1852(c)(2)(C) of the Social Security Act and 42 CFR 422.111(c).

We are proposing to revise this form by allowing plans to use data collected for Part C reporting requirements (OMB 0938–1054) that also meet requirements for this collection. This change merges and aligns the collection and reporting periods, so MA plans do not need to keep two separate sets of data and reports each year.

For CMS Part C reporting requirements, data is collected quarterly, but only reported annually. To match this and reduce plan burden, CMS is revising this form to use the data reported annually to CMS, and that data be valid for one year versus creating a new report every six months. Further, data provided to enrollees would be consistent with data provided to CMS. *Form Number:* CMS–R–282 (OMB control number: 0938–0778); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 733; *Total Annual Responses:* 59,133; *Total Annual Hours:* 5,405. (For policy questions regarding this collection contact Michele Hudson at 410–786–5490.)

2. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Application for New Medical Services and Technologies Seeking to Qualify for Add-On Payments Under the Hospital Inpatient Prospective Payment System; *Use:* Section 1886(d)(5)(K) authorizes the Secretary to establish a special payment methodology for new medical services and technologies used in inpatient procedures. To qualify for additional payments under this provision; a new technology must represent a substantial clinical improvement; data reflecting the cost of new technology must not yet be available in the data used to recalibrate the Medicare severity diagnosis-related groups (MS–DRGs); and the MS–DRG payment rate otherwise applicable to the new technology would be inadequate (see 42 CFR 412.87(b)). we are revising the estimated annual number of respondents from 32 to 62, based on the proposed alternative new technology add-on payment pathway for certain devices included in the FY 2020 IPPS proposed rule (CMS–1716–P). The existing regulations at 42 CFR 412.87 implement these provisions and specify three criteria for a new medical service or technology to receive the additional payment: (1) The medical service or technology must be new; (2) the medical service or technology must be costly such that the DRG rate otherwise applicable to discharges involving the medical service or technology is determined to be inadequate; and (3) the service or technology must demonstrate a substantial clinical improvement over existing services or technologies.

In the FY 2020 IPPS proposed rule (84 FR 19371–19373), we proposed an alternative new technology add-on payment pathway for certain devices. Specifically, for applications received for new technology add-on payments for FY 2021 and subsequent fiscal years, we proposed that a medical device that has received Federal Drug Administration (FDA) marketing authorization (that is, has been approved or cleared by, or had a De Novo classification request granted by, the FDA) and that is part of the FDA's Breakthrough Devices Program would need to meet the cost criterion (that is, the medical device must be costly such that the DRG rate otherwise applicable to discharges involving the medical device is determined to be inadequate). To implement this proposal, we proposed to revise the existing regulations at 42 CFR 412.87. We use the application in order to determine if a technology meets the new technology criteria under the existing pathway, and would revise the application to reflect the information required to determine if a device meets the new technology criteria the proposed alternative pathway for certain devices. The revise application that would be used if the proposed alternative new technology add-on payment pathway for certain devices is finalized in the FY 2020 IPPS final rule, which is expected to be issued by August 1, 2019. *Form Number:* CMS–10638 (OMB control number: 0938–1347); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or Other for-profits, Not for-profit Institutions; *Number of Respondents:* 62; *Total Annual Responses:* 62; *Total Annual Hours:* 1,655. (For policy questions regarding this collection contact Michele Hudson at 410–786–5490.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers; *Use:* The information collection requirements ensure that claimants receive adequate information regarding the plan's claims procedures and the plan's handling of specific benefit claims. Claimants need to understand plan procedures and plan decisions in order to appropriately request benefits and/or appeal benefit denials. The information collected in connection with the HHS-administered federal external review process is collected by HHS, and is used to provide claimants with an independent external review. *Form Number:* CMS–10338 (OMB control number: 0938–1099); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 4,711; *Total Annual Responses:* 4,711; *Total Annual Hours:* 1,195,626. (For policy questions regarding this collection contact Laura Byabazaire at 410–786–6650.)

Dated: August 12, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–17516 Filed 8–14–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1273]

Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment; 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 final

guidance for industry entitled ''Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment.'' The purpose of this guidance is to provide recommendations to industry for designing nonclinical bone quality studies to support the approval of drugs and biologics (*e.g.,* recombinant proteins and monoclonal antibodies regulated by the Center for Drug Evaluation and Research) intended for the treatment of osteoporosis.

DATES: The announcement of the guidance is published in the **Federal Register** on August 15, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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–2016–D–1273 for ''Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment.'' 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 this 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Gemma Kuijpers, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5336, Silver Spring, MD 20993–0002, 301–796–1243.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment.'' This guidance provides recommendations to industry for designing nonclinical bone quality studies to support the approval of drugs and biologics to treat osteoporosis. In addition to the pharmacology and toxicology studies required to support development of a new drug or biologic, long-term nonclinical studies, including bone-specific pharmacologic and toxicologic endpoints to evaluate the effects on bone quality, need to be conducted in appropriate animal models.

This guidance finalizes the draft guidance for industry entitled ''Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment'' issued in June 2016 (81 FR 38711). The main changes from the draft to final guidance include a modification of the recommended number of dose levels to be evaluated in the bone quality studies and the recommendation to use a multifactorial approach to determine the treatment duration in the conduct of the bone quality studies.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

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 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: August 12, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–17513 Filed 8–14–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements, OMB No. 0915–0307—Extension

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, included below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than October 15, 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 information request collection title for reference.

Information Collection Request Title: Ryan White HIV/AIDS Program (RWHAP) Core Medical Services Waiver Application Requirements, OMB No. 0915–0307—Extension

Abstract: Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (RWHAP), requires that grant recipients expend funds on core medical services including antiretroviral drugs for individuals with HIV who are eligible under the legislation. In addition, no less than 75 percent of the remainder of the total award amount after reserving statutory permissible amounts for administrative and clinical quality management costs are to be expended on core medical services.[1] For a grant recipient under the RWHAP Parts A, B, or C to be exempted from this requirement, a waiver must be requested from HRSA and submitted to the agency for review and approval in accordance with statute.

On October 25, 2013, HRSA published revised standards for core medical services waiver requests in the **Federal Register** (78 FR 63990). These revised standards allow grant recipients flexibility to adjust resource allocation based on the current situation in their local environments. These standards ensure that grant recipients receiving waivers demonstrate the availability of core medical services, including antiretroviral drugs, for persons with HIV served under the HRSA RWHAP. The core medical services waiver request process applies to RWHAP grant applicants and recipients under Parts A, B, and C of Title XXVI of the PHS Act. Core medical services waivers are effective for a 1-year period. Grant applicants may submit a waiver request before, or with the annual grant application, and grant recipients can submit up to four months after the grant award has been made.

Need and Proposed Use of the Information: HRSA uses the documentation submitted in core medical services waiver requests to determine if the grant applicant or recipient meets the statutory requirements for waiver eligibility including: (1) No waiting lists for AIDS Drug Assistance Program services; and (2) evidence of core medical services availability within the grant recipient's jurisdiction, state, or service area to all persons with HIV identified and eligible under Title XXVI of the PHS Act.[2]

Likely Respondents: RWHAP Parts A, B, and C grant applicants and recipients.

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. Total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Waiver Request	20	1	20	5.5	110
Total	20		20		110

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance

[1] Sections 2604(c)(1), 2612(b)(1), and 2651(c)(1) of the PHS Act.

[2] Sections 2604(c)(2), 2612(b)(2), and 2651(c)(2) of the PHS Act.

the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–17509 Filed 8–14–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health; Correction

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Office of the Assistant Secretary for Health published a document in the **Federal Register** of August 8, 2019, announcing the Advisory Committee on Minority Health's public meeting. The document includes supplementary information on the topic of the meeting that is now incorrect due to the more specific focus on strategies to address HIV-related health disparities among racial and ethnic minority populations to inform efforts related to the federal Ending the HIV Epidemic Initiative.

FOR FURTHER INFORMATION CONTACT: Violet Woo, Designated Federal Officer, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882; fax: 240–453–2883; email *OMH-ACMH@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 8, 2019, in FR Doc. 2019–16969, on page 38999, in the second column, replace the second paragraph under **SUPPLEMENTARY INFORMATION** to read: The topics to be discussed during this meeting will include strategies to address HIV-related health disparities among racial and ethnic minority populations. The recommendations will be given to the Deputy Assistant Secretary for Minority Health to inform efforts related to the federal Ending the HIV Epidemic Initiative.

Dated: August 8, 2019.

Violet Woo,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2019–17560 Filed 8–14–19; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0111]

Agency Information Collection Activities: Arrival and Departure Record (Forms I–94, I–94W) and Electronic System for Travel and Authorization (ESTA)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 15, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0111 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, Electronic System for Travel Authorization (ESTA).

OMB Number: 1651–0111.

Form Numbers: CBP Forms I–94 and I–94W.

Current Actions: This submission is being made to extend the expiration date of this information collection with no changes to the burden hours or to the information collected.

Type of Review: Extension (with no change).

Affected Public: Individuals.

Abstract: Forms I–94 (Arrival/Departure Record) and I–94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms are filled out by

aliens and are used to collect information on citizenship, residency, passport, and contact information. The data elements collected on these forms enable the Department of Homeland Security (DHS) to perform its mission related to the screening of alien visitors for potential risks to national security and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens seeking to travel to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States without a visa. Travelers who are entering the United States under the VWP in the air or sea environment, and who have a travel authorization obtained through ESTA, are not required to complete the paper Form I–94W. I–94 is provided for by 8 CFR 235.1(h), ESTA is provided for by 8 CFR 217.5.

Recent Changes

On November 27, 2017, the Secretary of State designated DPRK, as a State Sponsor of Terrorism, or SST. Countries determined by the Secretary of State ''to have repeatedly provided support for acts of international terrorism'' are considered to have been designated as ''state sponsors of terrorism.''

Section 217(a)(12)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. 1187(a)(12)(A)(i) bars from travel under the Visa Waiver Program (VWP) nationals of VWP program countries who have ''been present, at any time on or after March 1, 2011,''. . . ''in a country that is designated by the Secretary of State'' as a SST.

To meet the requirements and intent of the law and to keep ESTA and Form I–94W aligned, DHS is strengthening the security of the United States through enhancements to the ESTA application, and Form I–94W. Existing questions that request information from applicants/enrollees about countries to which they have traveled on or after March 1, 2011; countries of which they are citizens/nationals; and countries for which they hold passports are being revised to include, the DPRK.

Under the Emergency Clearance request process DHS has recently added DPRK to the following question to ESTA and Form I–94W (no change has been made to Form I–94): ''Have you traveled to, or been present in Iran, Iraq, Syria, Sudan, Libya, Somalia, Yemen, or the Democratic People's Republic of Korea (North Korea) on or after March 1, 2011? If yes, provide the country, date(s) of travel, and reason for travel.''

Form I–94 (Arrival and Departure Record):

Estimated Number of Respondents: 4,387,550.

Estimated Time per Response: 8 minutes.

Estimated Burden Hours: 583,544.

Estimated Annual Cost to Public: $26,325,300.

I–94 website:

Estimated Number of Respondents: 3,858,782.

Estimated Time per Response: 4 minutes.

Estimated Annual Burden Hours: 254,679.

Form I–94W (Nonimmigrant Visa Waiver Arrival/Departure):

Estimated Number of Respondents: 941,291.

Estimated Time per Response: 16 minutes.

Estimated Annual Burden Hours: 251,325.

Estimated Annual Cost to the Public: $5,647,746.

Electronic System for Travel Authorization (ESTA):

Estimated Number of Respondents: 23,010,000.

Estimated Time per Response: 23 minutes.

Estimated Total Annual Burden Hours: 8,812,830.

Estimated Annual Cost to the Public: $265,020,000.

Dated: August 12, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–17566 Filed 8–14–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0008]

Agency Information Collection Activities: Application for Identification Card

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than October 15, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0008 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Identification Card.

OMB Number: 1651–0008.

Form Number: CBP Form 3078.

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form 3078.

Type of Review: Extension (without change).

Abstract: CBP Form 3078, *Application for Identification Card,* is filled out in order to obtain an Identification Card which is used to gain access to CBP security areas. This form collects biographical information and is usually completed by licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form is submitted to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section. Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641; and 19 CFR 112.41, 112.42, 118, and 122.182. This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=3078&=Apply.*

Affected Public: Businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 42,450.

Dated: August 12, 2019.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–17568 Filed 8–14–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0139]

Agency Information Collection Activities: Electronic Visa Update System

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 15, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0139 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Electronic Visa Update System.

OMB Number: 1651–0139.

Form Number: N/A.

Current Actions: This submission is being made to extend the expiration date of this information collection with no changes to the burden hours or the information collected.

Type of Review: Extension (with no change).

Affected Public: Individuals.

Abstract: The Electronic Visa Update System (EVUS) allows for the collection of biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to this requirement must periodically enroll in EVUS and obtain a notification of compliance with EVUS prior to travel to the United States. The EVUS requirement is currently limited to nonimmigrant aliens holding unrestricted, maximum validity B–1 (business visitor), B–2 (visitor for pleasure), or combination B–1/B–2 visas contained in a passport issued by the People's Republic of China.

EVUS provides for greater efficiencies in the screening of international travelers by allowing DHS to identify

nonimmigrant aliens who may be inadmissible before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. EVUS aids DHS in facilitating legitimate travel while also enhancing public safety and national security.

Recent Changes

On November 27, 2017, the Secretary of State designated DPRK, as a State Sponsor of Terrorism, or SST. Countries determined by the Secretary of State ''to have repeatedly provided support for acts of international terrorism'' are considered to have been designated as ''state sponsors of terrorism.''

To meet the requirements and intent of the law and in light of the designation of DPRK as a SST, DHS is strengthening the security of the United States through enhancements to the EVUS enrollment.

Under the Emergency Clearance request process DHS has recently added DPRK to the following question to EVUS ''Have you traveled to, or been present in Iran, Iraq, Syria, Sudan, Libya, Somalia, Yemen, or the Democratic People's Republic of Korea (North Korea) on or after March 1, 2011? If yes, provide the country, date(s) of travel, and reason for travel.''

Estimated Number of Respondents: 3,595,904.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 3,595,904.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 1,499,492.

Dated: August 12, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–17567 Filed 8–14–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2019–0011]

Notice of President's National Security Telecommunications Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: Announcement of meeting; request for comments.

SUMMARY: The Cybersecurity and Infrastructure Security Agency (CISA) is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting is open to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on August 26, 2019.

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on August 26, 2019.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on August 26, 2019.

Meeting Date: The NSTAC will meet on September 3, 2019 from 4:00 p.m. to 5:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to participate, please email *NSTAC@hq.dhs.gov* by 5:00 p.m. ET on August 26, 2019.

Comments: Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that participants may discuss during the meeting will be available at *www.dhs.gov/cisa/national-security-telecommunications-advisory-committee* for review as of Monday, August 19, 2019. Comments may be submitted by 5:00 p.m. ET on August 26, 2019 and must be identified by Docket Number CISA–2019–0011. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the Docket Number CISA–2019–0011 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2019–0011.

A public comment period will be held during the meeting from 4:20 p.m.–4:40 p.m. ET. Speakers who wish to participate in the public comment period must register by emailing *NSTAC@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, 703–705–6276, *helen.jackson@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC was established by E.O. 12382, 47 FR 40531 (September 13, 1982), as amended and continued under the authority of E.O. 13811, dated September 29, 2017. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on Tuesday, September 3, 2019, to discuss issues and challenges related to NS/EP communications. This will include discussions with Senior Level Government Stakeholders, a review of ongoing NSTAC work and a deliberation, and vote on the *NSTAC Report to the President on Advancing Resiliency and Fostering Innovation in the Information and Communications Technology (ICT) Ecosystem.* In this report, the NSTAC examined technology capabilities that are critical to NS/EP functions in the evolving ICT ecosystem, and Government measures and policy actions to manage near term risks, support innovation, and enhance vendor diversity for NS/EP critical capabilities.

Dated: August 7, 2019.

Helen Jackson,

Designated Federal Officer, National Security Telecommunications Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2019–17480 Filed 8–14–19; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2019–N096; FXES11130300000–190–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before September 16, 2019.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Carlita Payne, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies, Tribes, and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE85294C	Amy Wolf, Green Bay, WI.	Rusty patched bumble bee (*Bombus affinis*).	WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Add new activity—radio-tag—to existing authorized activities: Capture, handle, hold, release.	Amend.
TE49331D	Shane Brodnick, Barboursville, WV.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bat (*Corynorhinus towsendii ingens*), Virginia big-eared bat (*C.t. virginianus*).	AL, AR, CT, FL, GA, IL, IN, IA, KS, KY, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, OK, PA, SC, TN, VT, VA, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, mist-net, harp trap, band, radio-tag, enter hibernacula and maternity roost caves, release.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2019–17529 Filed 8–14–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–N103; FXES11140400000–190–FF04EF2000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Hwy 540 Land Investments, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally

listed sand skink and blue-tailed mole skink incidental to land preparation and construction in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for review.

DATES: We must receive your written comments on or before September 16, 2019.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents by any of the following methods:

- *Telephone:* Lindsay Nester, 772–469–4226.
- *Email: lindsay_nester@fws.gov.* Use ''Attn: Permit number TE24579D'' as your message subject line.
- *U.S. mail:* Lindsay Nester, South Florida Ecological Services Field Office, Attn: Permit number ''TE24579D,'' U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person review:* The documents are available for public inspection by appointment during normal business hours at the above address. Please call to make an appointment.
- *Fax:* Lindsay Nester, 772–562–4288, Attn.: Permit number ''TE24579D.''

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing via the above email address, U.S. mail address, or fax number. You also may hand-deliver comments to the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lindsay Nester, by U.S. mail (see **ADDRESSES**) or via phone at 772–469–4226. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Hwy 540 Land Investments, LLC, for incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests a 5-year ITP for the take of the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius*) (skinks) incidental to land preparation and construction (project) in Polk County, Florida. We request public comment on the application, which includes a habitat conservation plan (HCP), and on our preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

Hwy 540 Land Investments, LLC requests a 5-year ITP to take sand skink and blue-tailed mole skink incidental to the conversion of approximately 7.46 acres of occupied foraging and sheltering habitat for construction of a housing development on a 38-acre parcel in Section 36, Township 28S, Range 25E, Polk County, Florida. The applicant proposes to mitigate for the take by purchasing and protecting 14.92 acres of occupied skink habitat at a Service-approved conservation bank prior to engaging in any land clearing activities on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public at any time. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the land preparation, construction, and proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily determined that the ITP for this project would qualify for categorical exclusion, and the HCP is ''low-effect'' under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not result over time in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE24579D–0 to Hwy 540 Land Investments, LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1531 *et seq.*) of the ESA and NEPA regulation 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2019–17533 Filed 8–14–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–N102; FXES11140400000–190–FF04EF2000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink, Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from CG Land Services, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests an ITP to take the federally listed sand skink and blue-tailed mole skink incidental to construction in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments by September 16, 2019.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents by any of the following methods:

- *Telephone:* Heather Hitt, 772–469–4267.
- *Email: heather_hitt@fws.gov.*
- *U.S. mail:* Heather Hitt, South Florida Ecological Services Field Office, Attn: Permit number ''TE28046D–0,'' U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person:* The documents may be reviewed by appointment during normal business hours at the above address. Please call to make an appointment.
- *Fax:* Heather Hitt, 772–562–4288, Attn.: Permit number ''TE28046D–0.''

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing via the above email address, U.S. mail address, or fax number, or you may hand-deliver comments to the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Heather Hitt, by U.S. mail (see **ADDRESSES**) or via phone at 772–469–4267. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from CG Land Services, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius lividus*) (skinks) incidental to the construction of a residential development (project) in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

CG Land Services, LLC requests a 5-year ITP to take skinks incidental to the conversion of approximately 1.8 acres of occupied skink foraging and sheltering habitat for the construction of a housing development on a 109-acre parcel in Section 13, Township 29 South, Range 25 East, Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 3.6 acres of skink-occupied habitat from a Service-approved skink conservation bank. The Service would require the applicant to purchase the credits prior to engaging in land clearing activities on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, construction of the residential development, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE28046D–0 to CG Land Services, LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2019–17521 Filed 8–14–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028571; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Natchez Trace Parkway has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Natchez Trace Parkway. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Natchez Trace Parkway at the address in this notice by September 16, 2019.

ADDRESSES: Mary Risser, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38804, telephone (662) 680–4005, email *mary_risser@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory

of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS. The human remains and associated funerary objects were removed from sites in Hickman and Maury Counties, TN, and Colbert County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Natchez Trace Parkway.

Consultation

A detailed assessment of the human remains was made by Natchez Trace Parkway professional staff in consultation with representatives of the Cherokee Nation, The Chickasaw Nation, The Seminole Nation of Oklahoma, and the United Keetoowah Band of Cherokee Indians in Oklahoma. The Eastern Band of Cherokee Indians were invited to consult but did not participate.

History and Description of the Remains

In 1983 and 1984, human remains representing, at minimum, six individuals were removed from the South Cave site in Colbert County, AL, during a survey conducted by the University of Mississippi under contract with the National Park Service. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing, at minimum, one individual were removed from the Baker's Knoll site in Hickman County, TN, during archeological testing and survey. No known individuals were identified. No associated funerary objects are present.

In 1984 and 1985, human remains representing, at minimum, 108 individuals were removed from the OldRoy site in Hickman County, TN, during excavations by the University of Tennessee for the National Park Service. No known individuals were identified. The 130 associated funerary objects are 22 projectile points, three bags of ochre pigment, five bifaces, 10 preforms, five limestone/fossil beads, one siltstone bead, six flakes, four flake tools, four abraders, two gorget fragments, one gorget, two steatite bowls, two cores, two knives, two steatite vessel fragments, one celt, one drill, one scraper, one sandstone pipe, 29 worked bones/antlers, 13 awls, nine punches, two beamers, and two faunal tooth fragments.

In 1984 and 1985, human remains representing, at minimum, 34 individuals were removed from the Fattybread Branch site in Maury County, TN, during excavations by the University of Tennessee for the National Park Service. No known individuals were identified. The 52 associated funerary objects are two projectile points, one bannerstone, 43 worked animal bones, five animal bones, and one bag of animal bone.

Determinations Made by Natchez Trace Parkway

Officials of Natchez Trace Parkway have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on removal from known Native American sites.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 149 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 182 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. The National Park Service intends to convey the associated funerary objects to the Tribes pursuant to 54 U.S.C. 102503(g) through (i) and 54 U.S.C. 102504.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians in Oklahoma.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mary Risser, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38804, telephone (662) 680–4005, email *mary_risser@nps.gov,* by September 16, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

Natchez Trace Parkway is responsible for notifying the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, The Seminole Nation of Oklahoma, and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: July 25, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–17553 Filed 8–14–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028521; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Missouri Department of Natural Resources, Jefferson City, MO; Correction; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Missouri Department of Natural Resources has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on September 22, 2017. This notice further corrects the cultural affiliation of the human remains and associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Missouri Department of Natural Resources. If no additional requestors come forward, transfer of

control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Missouri Department of Natural Resources at the address in this notice by September 16, 2019.

ADDRESSES: Mike Sutherland, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102, telephone (573)751–2123, email *mike.sutherland@dnr.mo.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Missouri Department of Natural Resources. The human remains and associated funerary objects were removed from the Clarksville Mound Group Site (23PI6) in Pike County, MO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation of the human remains and associated funerary objects originally published in a Notice of Inventory Completion in the **Federal Register** (82 FR 44453–44454, September 22, 2017). This correction is based on evidence of cultural affiliation of the human remains and associated funerary objects with The Osage Nation (previously listed as the Osage Tribe) that was provided after the Notice of Inventory Completion was published, including the December 21, 2018 Native American Graves Protection and Repatriation Review Committee Finding Regarding Human Remains and Associated Funerary Objects Under the Control of the State of Missouri Department of Natural Resources, State Historic Preservation Office, Jefferson City, MO, published in the **Federal Register** (84 FR 13064–13065, April 3, 2019). Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (82 FR 44453, September 22, 2017), column 3, full paragraph 3, under the heading ''Correction'' is corrected by substituting the following paragraph:

Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Osage Nation (previously listed as the Osage Tribe).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mike Sutherland, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102, telephone (573) 751–2123, email *mike.suthlerand@dnr.mo.gov,* by September 16, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Osage Nation (previously listed as the Osage Tribe) may proceed.

The Missouri Department of Natural Resources is responsible for notifying the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and The Osage Nation (previously listed as the Osage Tribe) that this notice has been published.

Dated: July 26, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–17554 Filed 8–14–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0028570; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Natchez Trace Parkway has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Natchez Trace Parkway. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Natchez Trace Parkway at the address in this notice by September 16, 2019.

ADDRESSES: Mary Risser, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38804, telephone (662) 680–4005, email *mary_risser@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Natchez Trace Parkway, Tupelo, MS. The human remains and associated funerary objects were removed from sites in Chickasaw and Lee Counties, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Natchez Trace Parkway.

Consultation

A detailed assessment of the human remains was made by Natchez Trace Parkway professional staff in consultation with representatives of the Cherokee Nation, The Chickasaw Nation, The Seminole Nation of Oklahoma, and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, 15 individuals were removed from the Rich Toy Factory site in Lee County, MS. The remains were found in 1984 in boxes in the abandoned warehouse. It is likely that looters removed them from a mound on the factory property. While it's unclear how the remains came to be in the possession of Natchez Trace Parkway, it appears likely that the staff historian of Natchez Trace Parkway received them from the owners of the warehouse. No known individuals were identified. No associated funerary objects are present.

In 1947 and 1948, human remains representing, at minimum, 16 individuals were removed from the Bynum Mounds site in Chickasaw County, MS, during archeological investigations by the National Park Service. No known individuals were identified. The four associated funerary objects are four hammered copper spools.

Determinations Made by Natchez Trace Parkway

Officials of Natchez Trace Parkway have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on removal from known Native American sites.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 31 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. The National Park Service intends to convey the associated funerary objects to the tribes pursuant to 54 U.S.C. 102503(g) through (i) and 54 U.S.C. 102504.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Chickasaw Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mary Risser, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38804, telephone (662) 680–4005, email *mary_risser@nps.gov,* by September 16, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Chickasaw Nation may proceed.

Natchez Trace Parkway is responsible for notifying the Cherokee Nation, The Chickasaw Nation, The Seminole Nation of Oklahoma, and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: July 25, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–17552 Filed 8–14–19; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wireless Communication Devices, and Related Components Thereof, DN 3402;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Innovation Sciences LLC on August 9, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communication devices, and related components thereof. The complaint names as respondents: Resideo Technologies, Inc. of Austin, TX; HTC Corporation of Taiwan; and HTC America, Inc. of Seattle, WA. The complainant requests that the Commission issue a limited exclusion order, limited cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant,

its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3402'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–17564 Filed 8–14–19; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1110]

Certain Strontium-Rubidium Radioisotope Infusion Systems, and Components Thereof Including Generators; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination on Section 337 Violation and a Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. 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: Section 337 of the Tariff Act of 1930 (''Section 337'') provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless after considering the public interest factors listed in 19 U.S.C. 1337(d)(1), it finds such articles should not be prevented from entry.

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically whether the Commission should issue a limited exclusion order (''LEO'') against certain strontium-rubidium radioisotope infusion systems, and components thereof including generators that are imported, sold for importation, and/or sold after importation by respondents Jubilant DraxImage Inc. of Kirkland, Quebec, Canada; Jubilant Pharma Limited of Singapore; and Jubilant Life Sciences of Noida, Uttar Pradesh, India.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on August 1, 2019. Comments should address whether issuance of an LEO in this investigation, should the Commission find a violation,

would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainants, their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the LEO would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on Thursday, September 12, 2019.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1110'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR part 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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: August 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–17562 Filed 8–14–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States, et al. v. Nexstar Media Group, Inc., et al.: Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America, et al.* v. *Nexstar Media Group, Inc., et al.,* Civil Action No. 1:19–cv–2295. On July 31, 2019, the United States, along with the offices of three states Attorneys General, filed a Complaint alleging that Nexstar Media Group, Inc.'s (''Nexstar'') proposed acquisition of Tribune Media Company (''Tribune'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Nexstar to divest certain broadcast television stations in Davenport, Iowa-Rock Island-Moline, Illinois; Des Moines-Ames, Iowa; Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas; Grand Rapids-Kalamazoo-Battle Creek, Michigan; Harrisburg-Lancaster-Lebanon-York, Pennsylvania; Hartford-New Haven, Connecticut; Huntsville-Decatur-Florence, Alabama; Indianapolis, Indiana; Memphis, Tennessee; Norfolk-Portsmouth-Newport News, Virginia; Richmond-Petersburg, Virginia; Salt Lake City, Utah; and Wilkes-Barre-Scranton, Pennsylvania.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register.** Comments should be directed to Owen Kendler, Chief, Media Entertainment and Professional Services Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (telephone: 202–305–8376).

Amy R. Fitzpatrick,

Counsel to the Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 450 Fifth Street NW, Washington, DC 20530; STATE OF ILLINOIS, 100 West Randolph Street, Chicago, IL 60601; COMMONWEALTH OF PENNSYLVANIA, 14th Floor, Strawberry Square, Harrisburg, PA 17120; and, COMMONWEALTH OF VIRGINIA, 202 North 9th Street, Richmond, VA 23219, *Plaintiffs*, v. NEXSTAR MEDIA GROUP, INC., 545 E. John Carpenter Freeway, Suite 700, Irving, TX 75062; and TRIBUNE MEDIA COMPANY, 515 North State Street, Chicago, IL 60654, *Defendants*.

Civil Action No. 1:19-cv-2295 (DLF)

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Illinois and the Commonwealths of Pennsylvania and Virginia (''Plaintiff States''), bring this civil action against Nexstar Media Group, Inc. (''Nexstar'') and Tribune Media Company (''Tribune'') to enjoin Nexstar's proposed merger with Tribune. The Plaintiffs allege as follows:

I. NATURE OF THE ACTION

1. Pursuant to an Agreement and Plan of Merger dated November 30, 2018, Nexstar plans to acquire Tribune for approximately $6.4 billion.

2. The proposed merger would combine two of the largest independent local television station owners in the United States and would combine many popular local television stations that compete against each other in several markets, likely resulting in significant harm to competition.

3. In twelve Designated Market Areas (''DMAs''), Nexstar and Tribune each own at least one broadcast television station that is an affiliate of one of the

''Big 4'' television networks: NBC, CBS, ABC, or FOX. These twelve DMAs, collectively referred to in this Complaint as the ''Big 4 Overlap DMAs,'' are: (i) Davenport, Iowa-Rock Island-Moline, Illinois; (ii) Des Moines-Ames, Iowa; (iii) Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas; (iv) Grand Rapids-Kalamazoo-Battle Creek, Michigan; (v) Harrisburg-Lancaster-Lebanon-York, Pennsylvania; (vi) Hartford-New Haven, Connecticut; (vii) Huntsville-Decatur-Florence, Alabama; (viii) Memphis, Tennessee; (ix) Norfolk-Portsmouth-Newport News, Virginia; (x) Richmond-Petersburg, Virginia; (xi) Salt Lake City, Utah; and (xii) Wilkes-Barre-Scranton, Pennsylvania.

4. Additionally, in the Indianapolis, Indiana DMA (''Indianapolis DMA''), Tribune owns two Big 4 stations and Nexstar owns the CW and MyNetworkTV affiliates. Nexstar's CW station has a higher than usual market share for a CW affiliate because of its strong local news programming; until 2014, the station had been the CBS affiliate in the Indianapolis DMA. The Big 4 Overlap DMAs and the Indianapolis DMA together are referred to in this Complaint as ''Overlap DMAs.''

5. In each Big 4 Overlap DMA, the proposed merger would eliminate competition between Nexstar and Tribune in the licensing of Big 4 network content (''retransmission consent'') to cable, satellite, fiber optic television, and over-the-top providers (referred to collectively as multichannel video programming distributors or ''MVPDs''), for distribution to their subscribers. Additionally, in each Overlap DMA, the proposed merger would substantially lessen competition in the sale of broadcast television spot advertising to advertisers interested in reaching viewers in the DMA.

6. By eliminating a major competitor, the merger would likely give Nexstar the power to charge MVPDs higher fees for its programming—fees that those companies would likely pass on, in large measure, to their subscribers. Additionally, the merger would likely allow Nexstar to charge local businesses and other advertisers higher prices to reach audiences in the Overlap DMAs.

7. As a result, the proposed merger of Nexstar and Tribune likely would substantially lessen competition in the markets for licensing Big 4 television retransmission consent in each of the Big 4 Overlap DMAs, and in the markets for selling broadcast television spot advertising in each of the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

8. Nexstar is a Delaware corporation with its headquarters in Irving, Texas. Nexstar owns 171 television stations in 100 DMAs, of which 136 stations are Big 4 affiliates. In 2018, Nexstar reported revenues of $2.8 billion.

9. Tribune is a Delaware corporation with its headquarters in Chicago, Illinois. Tribune owns 44 television stations in 33 DMAs, of which 27 stations are Big 4 affiliates. In 2018, Tribune earned revenues of more than $2.0 billion.

III. JURISDICTION AND VENUE

10. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

11. The Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The Plaintiff States, by and through their respective Attorneys General, bring this action as parens patriae on behalf of and to protect the health and welfare of their citizens and the general economy in each of their states.

12. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

13. Defendants license Big 4 television retransmission consent to MVPDs, and sell broadcast television spot advertising to businesses (either directly or through advertising agencies), in the flow of interstate commerce, and such activities substantially affect interstate commerce.

14. Nexstar and Tribune have consented to venue and personal jurisdiction in this judicial district. Both companies transact business in this district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391(b)(1) and (c).

IV. BIG 4 TELEVISION RETRANSMISSION CONSENT MARKETS

A. Background

15. MVPDs, such as Comcast, DirecTV, and Charter, typically pay the owner of each local Big 4 broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPD's subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers are set forth in a retransmission agreement. A retransmission agreement is negotiated directly between a broadcast station group, such as Nexstar or Tribune, and a given MVPD, and this agreement typically covers all of the station group's stations located in the MVPD's service area, or ''footprint.''

16. Each broadcast station group typically renegotiates retransmission agreements with the MVPDs every few years. If an MVPD and a broadcast station group cannot agree on a retransmission consent fee at the expiration of a retransmission agreement, the result may be a ''blackout'' of the broadcast group's stations from the particular MVPD—i.e., an open-ended period during which the MVPD may not distribute those stations to its subscribers until a new contract is successfully negotiated.

B. Relevant Markets

1. Product Market

17. Big 4 broadcast content has special appeal to television viewers in comparison to the content that is available through other broadcast stations and cable channels. Big 4 stations usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly ranked primetime programs. Viewers typically consider the Big 4 stations to be close substitutes for one another.

18. Because of Big 4 stations' popular national content and valued local coverage, MVPDs regard Big 4 programming as highly desirable for inclusion in the packages they offer subscribers.

19. Non-Big 4 broadcast stations are typically not close substitutes for viewers of Big 4 stations. Stations that are affiliates of networks other than the Big 4, such as the CW Network, MyNetworkTV, or Telemundo, typically feature niche programming without local news or sports—or, in the case of Telemundo, aimed at a Spanish-speaking audience. Stations that are unaffiliated with any network are similarly unlikely to carry programming with broad popular appeal.

20. If an MVPD suffers a blackout of a Big 4 station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big 4 stations in the DMA to watch similar content, such as sports, primetime shows, and local news and weather. This willingness of viewers to switch between competing Big 4 broadcast

stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MVPD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost.

21. Due to the limited programming typically offered by non-Big 4 stations, viewers are much less likely to switch to a non-Big 4 station than to switch to other Big 4 stations in the event of a blackout of a Big 4 station. Accordingly, competition from non-Big 4 stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big 4 stations.

22. For the same reasons, subscribers—and therefore MVPDs—generally do not view cable network programming as a close substitute for Big 4 network content. This is primarily because cable channels offer different content. For example, cable channels generally do not offer local news, which provides a valuable connection to the local community that is important to viewers of Big 4 stations.

23. Because viewers do not regard non-Big 4 broadcast stations or cable networks as close substitutes for the programming they receive from Big 4 stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big 4 television retransmission consent. Accordingly, a hypothetical monopolist of Big 4 television stations would likely increase the retransmission consent fees it charges to MVPDs for those stations by at least a small but significant amount.

24. The licensing of Big 4 television retransmission consent therefore constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Geographic Markets

25. A DMA is a geographic unit for which A.C. Nielsen Company—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission (''FCC'') also uses DMAs as geographic units with respect to its MVPD regulations.

26. In the event of a blackout of a Big 4 network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA. Thus, Big 4 viewers in one DMA cannot switch to Big 4 programming in another DMA in the face of a blackout. Therefore, substitution to stations outside the DMA cannot discipline an increase in the fees charged for retransmission consent for broadcast stations in the DMA. Each DMA thus constitutes a relevant geographic market for the licensing of Big 4 television retransmission consent within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Likely Anticompetitive Effects

27. The more concentrated a market would be as a result of a proposed merger, the more likely it is that the proposed merger would substantially lessen competition. Concentration can be measured by the widely used Herfindahl-Hirschman Index (''HHI'').[1] Under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, mergers that result in highly concentrated markets (i.e., with an HHI over 2,500) and that increase the HHI by more than 200 points are presumed likely to enhance market power.

28. The chart below summarizes Defendants' approximate Big 4 television retransmission consent market shares, based on revenue, and the effect of the transaction on the HHI in each Big 4 Overlap DMA.[2]

Big 4 overlap DMA	Nexstar share (%)	Tribune share (%)	Merged share (%)	Pre-merger HHI	Post-merger HHI	HHI increase
Wilkes Barre, PA	54.0	24.7	78.7	3981	6645	2664
Ft. Smith, AR	63.4	15.0	78.4	4708	6613	1906
Norfolk, VA	56.0	21.1	77.1	4104	6465	2361
Grand Rapids, MI	43.4	16.3	59.7	2974	4391	1417
Hartford, CT	33.5	25.4	58.9	2636	4338	1702
Memphis, TN	38.4	17.6	56.1	2762	4118	1356
Davenport, IA	36.8	14.9	51.6	2744	3838	1094
Des Moines, IA	34.5	13.9	48.4	2798	3756	958
Huntsville, AL	32.5	16.6	49.1	2630	3710	1080
Salt Lake City, UT	32.1	15.5	47.5	2691	3683	992
Harrisburg, PA	25.3	22.1	47.4	2553	3670	1117
Richmond, VA	28.0	16.9	44.9	2672	3617	945

29. As indicated by the preceding chart, the post-merger HHI in each Big 4 Overlap DMA is well above 2,500, and the HHI increase in each Big 4 Overlap DMA far exceeds the 200-point threshold. Thus, the proposed merger presumptively violates Section 7 of the Clayton Act in each Big 4 Overlap DMA.

30. The proposed merger would enable Nexstar to black out more Big 4 stations simultaneously in each of the Big 4 Overlap DMAs than either Nexstar or Tribune could black out independently today, likely leading to increased retransmission consent fees charged to such MVPDs.

31. Retransmission consent fees generally are passed through to an MVPD's subscribers in the form of higher subscription fees or as a line item on their bills.

32. For these reasons, the proposed merger of Nexstar and Tribune likely would substantially lessen competition

[1] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

[2] In this chart and the one below, sums that do not agree precisely reflect rounding.

in the licensing of Big 4 television retransmission consent in each of the Big 4 Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

V. BROADCAST TELEVISION SPOT ADVERTISING MARKETS

A. Background

33. Broadcast television stations, including both Big 4 broadcast stations and non-Big 4 stations in the Overlap DMAs, sell advertising ''spots'' during breaks in their programming. Advertisers purchase spots from a broadcast station to communicate with viewers within the DMA in which the broadcast television station is located. Broadcast television spot advertising is distinguished from ''network'' advertising, which consists of advertising time slots sold on nationwide broadcast networks by those networks, and not by local broadcast stations or their representatives.

34. Nexstar and Tribune compete with one another to sell broadcast television spot advertising in each of the Overlap DMAs.

B. Relevant Markets

1. Product Market

35. Broadcast television spot advertising, including spot advertising on both Big 4 and non-Big 4 broadcast stations, constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18. Advertisers' inability or unwillingness to substitute to other types of advertising in response to a price increase in broadcast television spot advertising supports this relevant market definition.

i. Overview of Local Broadcast Television Spot Advertising

36. Typically, an advertiser purchases broadcast television advertising spots as one component of an advertising strategy that may also include cable spots, newspaper advertisements, billboards, radio spots, digital advertisements, email advertisements, and direct mail.

37. Different components of an advertising strategy generally target different audiences and serve distinct purposes. Advertisers that advertise on broadcast stations do so because the stations offer popular programming such as local news, sports, and primetime and syndicated shows that are especially attractive to a broad demographic base and a large audience of viewers. Other categories of advertising may offer different characteristics, making them potential complements to broadcast television advertising, but not close substitutes. For example, ads associated with online search results target individual consumers or respond to specific keyword searches, whereas broadcast television advertising reaches a broad audience throughout a DMA.

38. Technological developments may bring various advertising categories into closer competition with each other. For example, broadcasters and cable networks are developing technology to make their spot advertising addressable, meaning that broadcasters could deliver targeted advertising in live broadcast and on-demand formats to smart televisions or streaming devices. For certain advertisers, these technological changes may make other categories of advertising closer substitutes for advertising on broadcast television in the future. However, at this time, for many broadcast television spot advertising advertisers, these projected developments are insufficient to mitigate the effects of the merger in the Overlap DMAs.

ii. Cable Television Spot Advertising

39. MVPDs sell spot advertising to be shown during breaks in cable network programming. For viewers, these advertisements are similar to broadcast ads. That, however, does not mean that cable television spot advertising should be included in the product market. For the following reasons, cable television spot advertising is at this time a relatively ineffective substitute for broadcast television spot advertising for most advertisers.

40. First, broadcast television spot advertising is a more efficient option than cable television spot advertising for many advertisers. Because broadcast television offers highly rated programming with broad appeal, each broadcast television advertising spot typically offers the opportunity to reach more viewers (more ''ratings points'') than a single spot on a cable channel. By contrast, MVPDs offer dozens of cable channels with specialized programs that appeal to niche audiences. This fragmentation allows advertisers to target narrower demographic subsets by buying cable spots on particular channels, but it does not meet the needs of advertisers who want to reach a large percentage of a DMA's population.

41. Second, households that have access to cable networks are divided among multiple MVPDs within a DMA. In some DMAs, MVPDs sell some spot advertising through consortia called ''interconnects.'' Sometimes these interconnects include all of the largest MVPDs in a DMA, approaching but not matching broadcast stations' reach. But in other, especially smaller DMAs, the interconnect only contains a subset of MVPDs, which reduces the reach of the interconnect's advertisements. In contrast, broadcast television spot advertising reaches all households that subscribe to an MVPD and, through an over-the-air signal, most households with a television that do not.

42. Finally, MVPDs' inventory of cable television spot advertising is limited—typically to two minutes per hour—contrasting sharply with broadcast stations' much larger number of minutes per hour. The inventory of DMA-wide cable television spot advertising is substantially further reduced by the large portion of those spots allocated to local zone advertising, in which an MVPD sells spots by geographic zones within a DMA, allowing advertisers to target smaller geographic areas. Due to the limited inventories and lower ratings associated with cable television spot programming, cable television spot advertisements cannot offer a sufficient volume of ratings points, or broad enough household penetration, to provide a viable alternative to broadcast television spot advertising at this time. Because of these limitations, MVPDs and interconnects would be unable to expand output or increase sales sufficiently to defeat a small but significant increase in the prices charged for broadcast television spot advertising in a given DMA.

iii. Digital Advertising

43. Digital advertising is not a sufficiently close substitute for broadcast television spot advertising. Some digital advertising, such as static and floating banner advertisements, static images, text advertisements, wallpaper advertisements, pop-up advertisements, flash advertisements, and paid search results, lacks the combination of sight, sound, and motion that makes television spot advertising particularly impactful and memorable and therefore effective for advertisers. Digital video advertisements, on the other hand, do allow for a combination of sight, sound, and motion, and on this basis are more comparable to broadcast television spot advertising than other types of digital advertising, but are still not close substitutes for broadcast television spot advertising for the reasons stated below.

44. First, digital advertisements typically reach a different audience than broadcast television spot advertising. Whereas advertisers use broadcast television spots to reach a large

percentage of households in a DMA, advertisers use digital advertising to reach a variety of different audiences. While a small portion of advertisers purchase DMA-wide advertisements on digital platforms, digital advertisements usually are targeted either very broadly, such as nationwide or regional, or to a smaller geographic target, such as a city or a zip code, or to narrow demographic subsets of a population.

45. Second, inventory of ad-supported, high-quality, long-form video on the internet is limited. Advertisers see value to advertising on video that is watched by the audience they seek to target. High-quality, long-form video is the most similar content to broadcast television programming available on the internet. The most popular high-quality, long-form video available on the internet is provided through ad-free subscription services (like Netflix or Amazon Prime), over-the-top MVPDs that sell cable television spot advertisements (like Sling and YouTube TV), or sold directly by the networks on their own network sites. The remaining inventory of digital advertisements attached to high-quality, long-form video on the internet, which is primarily sold by digital advertising platforms, is small today. Because of these limitations, digital video advertising would be unable to expand output or increase sales sufficiently to defeat a small but significant increase in the prices charged for broadcast television spot advertising in a given DMA.

iv. Other Forms of Advertising

46. Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also do not constitute effective substitutes for broadcast television spot advertising. These forms of media do not reach as many local viewers or drive brand awareness to the same extent as broadcast television does. Broadcast television spot advertising possesses a unique combination of attributes that advertisers value in a way that sets it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful.

47. For all of these reasons, advertisers likely would not respond to a small but significant non-transitory increase in the price of broadcast television spot advertising by switching to other forms of advertising—such as cable, digital, print, radio, or billboard advertising—in sufficiently large numbers to make the price increase unprofitable.

v. Broadcasters' Negotiations with Advertisers and Internal Analyses

48. While cable spot or digital advertising may constrain broadcast television spot advertising prices in the future, it does not do so today. On a cost-per-point basis (cost to reach one percent of a relevant target population), over the last few years broadcast television spot advertising prices have generally remained steady or increased. If cable spot or digital advertising was a close and robust competitor to broadcast television spot advertising, then, all else being equal, competition from cable spot or digital advertising would place downward pressure on broadcast television spot advertising pricing. But they have not had this effect.

49. The differentiation between broadcast television spot advertising and cable spot and digital advertising bears out in negotiations between broadcasters and advertisers. Advertisers usually will put an advertising buy out to bid to many or all broadcast stations in a DMA, and will not include MVPDs or digital advertisers in that same bid. In negotiations with broadcast stations, advertisers regularly discuss offered prices and opportunities from other broadcast stations in the same DMA to try to bargain down price, but they rarely discuss price offers or opportunities from MVPDs or digital advertisers in those negotiations. When a broadcaster salesperson internally analyzes the station's performance on any particular buy, the salesperson typically looks at the percentage of the buy that was allocated to each broadcast station, adding up to 100% of the buy. The salesperson typically does not consider any allocation of an advertiser's spending on cable or digital advertising. Likewise, if an advertiser reports to a broadcaster salesperson the percentage of a buy that the broadcaster received, the advertiser typically reports the broadcaster's percentage of the amount awarded to all broadcast stations in the DMA, but does not include any amount spent on cable or digital advertising.

50. Internally, broadcasters make most of their competitor comparisons against other broadcasters in the same DMA, not against MVPDs in that DMA or digital advertisers. When reporting to their station managers and corporate headquarters, broadcast station sales executives regularly report on their performance vis-à-vis other broadcast stations in the DMA; they rarely report on their performance against cable or digital platforms. When looking for new business, broadcast stations use third-party services to identify advertisers advertising on other broadcast stations, but do not subscribe to similar services for cable or digital advertising. Similarly, the national sales representation firms regularly report to broadcast stations about competition from representatives for other broadcasters in the same DMA, but rarely report on competition from representatives for cable or digital platforms. Many broadcasters use a third-party data analysis service to help set their spot advertising rate cards; that service uses market share estimates from other broadcasters as input data to generate the rate cards, but does not use market share estimates from cable or digital advertising platforms.

2. Geographic Markets

51. For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience. The signals of broadcast television stations located outside of the DMA generally do not reach any significant portion of the target DMA through either over-the-air signal or MVPD distribution. Because advertisers cannot reach viewers inside a DMA by advertising on stations outside the DMA, a hypothetical monopolist of broadcast television spot advertising on stations in a given DMA would likely implement at least a small but significant non-transitory price increase.

52. Each of the Overlap DMAs accordingly constitutes a relevant geographic market for the sale of broadcast television spot advertising within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Likely Anticompetitive Effects

53. The chart below summarizes Defendants' approximate market shares and the result of the transaction on the HHIs in the sale of broadcast television spot advertising in each of the Overlap DMAs.

Overlap DMA	Nexstar share (%)	Tribune share (%)	Merged share (%)	Pre-merger HHI	Post-merger HHI	HHI increase
Wilkes Barre, PA	35.8	47.6	83.4	3749	7161	3412
Norfolk, VA	44.0	31.4	75.4	3277	6038	2761
Ft. Smith, AR	29.1	41.3	70.3	3361	5761	2400
Davenport, IA	27.0	27.1	54.2	3568	5035	1467
Grand Rapids, MI	36.0	19.0	55.0	2700	4065	1365
Des Moines, IA	11.2	34.6	45.8	3235	4009	774
Richmond, VA	20.9	29.9	50.8	2733	3981	1248
Huntsville, AL	13.9	33.0	46.9	2786	3704	918
Memphis, TN	14.5	33.3	47.9	2558	3527	969
Harrisburg, PA	21.8	20.8	42.5	2524	3427	903
Indianapolis, IN	13.1	31.0	44.2	2577	3393	815
Hartford, CT	22.7	20.6	43.3	2306	3240	934
Salt Lake City, UT	16.0	24.1	40.0	2329	3098	769

54. Defendants' large market shares reflect the fact that, in each Overlap DMA, Nexstar and Tribune each own one or more significant broadcast stations. As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold above which a transaction is presumed to enhance market power and harm competition. Defendants' proposed transaction is thus presumptively unlawful in each Overlap DMA.

55. In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would combine Nexstar's and Tribune's broadcast television stations, which are close substitutes and generally vigorous competitors in the sale of broadcast television spot advertising. In each Overlap DMA, Defendants' broadcast stations compete head-to-head in the sale of broadcast television spot advertising. Advertisers obtain lower prices as a result of this competition. In particular, advertisers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups—''buying around'' the station that raises its prices. This practice allows the advertisers either to avoid the first station's price increase, or to pressure the first station to lower its prices.

56. If Nexstar acquires Tribune's stations, advertisers seeking to reach audiences in the Overlap DMAs would have fewer competing broadcast television alternatives available to meet their advertising needs, and would find it more difficult and costly to buy around higher prices imposed by the combined stations. This would likely result in increased advertising prices, lower quality local programming to which the spot advertising is attached (for example, less investment in local news), and less innovation in providing advertising solutions to advertisers.

57. For these reasons, the proposed merger likely would substantially lessen competition in the sale of broadcast television spot advertising in each of the Overlap DMAs, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. ABSENCE OF COUNTERVAILING FACTORS

58. Entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed merger's likely anticompetitive effects in the relevant markets. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all.

59. Defendants cannot demonstrate merger-specific, verifiable efficiencies sufficient to offset the proposed merger's likely anticompetitive effects.

VII. VIOLATIONS ALLEGED

60. The proposed merger of Nexstar and Tribune likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The merger likely would have the following effects, among others:

a. competition in the licensing of Big 4 television retransmission consent in each of the Big 4 Overlap DMAs likely would be substantially lessened;

b. competition between Nexstar and Tribune in the licensing of Big 4 television retransmission consent in each of the Big 4 Overlap DMAs would be eliminated;

c. the fees charged to MVPDs for the licensing of retransmission consent in each of the Big 4 Overlap DMAs likely would increase;

d. competition in the sale of broadcast television spot advertising in each of the Overlap DMAs likely would be substantially lessened;

e. competition between Nexstar and Tribune in the sale of broadcast television spot advertising in each of the Overlap DMAs would be eliminated; and

f. prices for spot advertising on broadcast television stations in each of the Overlap DMAs likely would increase, the quality of local programming likely would decrease, and Defendants likely would be less innovative in providing advertising solutions to advertisers.

VIII. RELIEF REQUESTED

61. The Plaintiffs request that:

a. the Court adjudge the proposed merger to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. the Court enjoin and restrain Defendants from carrying out the merger, or entering into any other agreement, understanding, or plan by which Nexstar would merge with, acquire, or be acquired by Tribune, or Nexstar and Tribune would combine any of their respective Big 4 stations in the Big 4 Overlap DMAs or their stations in the Indianapolis DMA;

c. the Court award Plaintiffs the costs of this action; and

d. the Court award such other relief to Plaintiffs as the Court may deem just and proper.

Dated: July 31, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF ILLINOIS, COMMONWEALTH OF PENNSYLVANIA, and COMMONWEALTH OF VIRGINIA, *Plaintiffs*, v. NEXSTAR MEDIA GROUP, INC. and TRIBUNE MEDIA COMPANY, *Defendants*.

Civil Action No. 1:19–cv–2295 (DLF)

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and the State of Illinois and the Commonwealths of Pennsylvania and Virginia (collectively, the ''Plaintiff States''), filed their Complaint on July 31, 2019, and Defendant Nexstar Media Group, Inc., and Defendant Tribune Media Company, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. *JURISDICTION*

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. *DEFINITIONS*

As used in this Final Judgment:

A. ''Acquirer'' means Scripps, TEGNA, Circle City Broadcasting, or any other entity or entities to which Defendants divest any of the Divestiture Assets.

B. ''Circle City Broadcasting'' means Circle City Broadcasting I, Inc., a Delaware corporation headquartered in Indianapolis, Indiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, members, officers, managers, agents, and employees.

C. ''Cooperative Agreement'' means (1) joint sales agreements, joint operating agreements, local marketing agreements, news share agreements, or shared services agreements, or (2) any agreement through which a person exercises control over any broadcast television station not owned by the person.

D. ''Defendants'' means Nexstar and Tribune.

E. ''Divestiture Assets'' means the Divestiture Stations and all assets, tangible or intangible, necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast television stations, including, but not limited to, all real property (owned or leased), all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property relating to the Divestiture Stations; all licenses, permits, and authorizations issued by, and applications submitted to, the FCC and other government agencies relating to the Divestiture Stations; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings of Defendants relating to the Divestiture Stations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the Divestiture Stations; all customer lists, contracts, accounts, and credit records related to the Divestiture Stations; all logs and other records maintained by Defendants in connection with the Divestiture Stations; and the content and affiliation of each digital subchannel of the Divestiture Stations.

F. ''Divestiture Stations'' means KCWI-TV, KFSM-TV, KSTU, WATN-TV, WCCT-TV, WGNT, WISH-TV, WLMT, WNDY-TV, WNEP-TV, WOI-DT, WPMT, WQAD-TV, WTIC-TV, WTKR, WTVR-TV, WXMI, and WZDX.

G. ''DMA'' means Designated Market Area as defined by The Nielsen Company (US), LLC, based upon viewing patterns and used by BIA Advisory Services' *Investing in Television Market Report 2018* (4th edition).

H. ''FCC'' means the Federal Communications Commission.

I. ''KCWI-TV'' means the CW-affiliated broadcast television station bearing that call sign located in the Des Moines-Ames, Iowa, DMA, owned by Defendant Nexstar.

J. ''KFSM-TV'' means the CBS-affiliated broadcast television station bearing that call sign located in the Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas, DMA, owned by Defendant Tribune.

K. ''KSTU'' means the FOX-affiliated broadcast television station bearing that call sign located in the Salt Lake City, Utah, DMA, owned by Defendant Tribune.

L. ''Nexstar'' means defendant Nexstar Media Group, Inc., a Delaware corporation headquartered in Irving, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

M. ''Scripps'' means the E.W. Scripps Company, an Ohio corporation headquartered in Cincinnati, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

N. ''TEGNA'' means TEGNA Inc., a Delaware corporation headquartered in McLean, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

O. ''Tribune'' means defendant Tribune Media Company, a Delaware corporation headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

P. ''WATN-TV'' means the ABC-affiliated broadcast television station bearing that call sign located in the Memphis, Tennessee, DMA, owned by Defendant Nexstar.

Q. ''WCCT-TV'' means the CW-affiliated broadcast television station bearing that call sign located in the Hartford-New Haven, Connecticut, DMA, owned by Defendant Tribune.

R. ''WGNT'' means the CW-affiliated broadcast television station bearing that call sign located in the Norfolk-Portsmouth-Newport News, Virginia, DMA, owned by Dreamcatcher Broadcasting LLC, regarding which Tribune will exercise its option to acquire from Dreamcatcher Broadcasting LLC.

S. ''WISH-TV'' means the CW-affiliated broadcast television station bearing that call sign located in the Indianapolis, Indiana, DMA, owned by Defendant Nexstar.

T. ''WLMT'' means the CW-affiliated broadcast television station bearing that call sign located in the Memphis, Tennessee, DMA, owned by Defendant Nexstar.

U. ''WNDY-TV'' means the MyNetworkTV-affiliated broadcast television station bearing that call sign located in the Indianapolis, Indiana, DMA, owned by Defendant Nexstar.

V. ''WNEP-TV'' means the ABC-affiliated broadcast television station bearing that call sign located in the Wilkes Barre-Scranton, Pennsylvania, DMA, owned by Dreamcatcher Broadcasting LLC, regarding which Tribune will exercise its option to acquire from Dreamcatcher Broadcasting LLC.

W. ''WOI-DT'' means the ABC-affiliated broadcast television station bearing that call sign located in the Des Moines-Ames, Iowa, DMA, owned by Defendant Nexstar.

X. ''WPMT'' means the FOX-affiliated broadcast television station bearing that call sign located in the Harrisburg-Lancaster-Lebanon-York, Pennsylvania, DMA, owned by Defendant Tribune.

Y. ''WQAD-TV'' means the ABC-affiliated broadcast television station bearing that call sign located in the Davenport, Iowa-Rock Island-Moline, Illinois, DMA, owned by Defendant Tribune.

Z. ''WTIC-TV'' means the FOX-affiliated broadcast television station bearing that call sign located in the Hartford-New Haven, Connecticut, DMA, owned by Defendant Tribune.

AA. ''WTKR'' means the CBS-affiliated broadcast television station bearing that call sign located in the Norfolk-Portsmouth-Newport News, Virginia, DMA, owned by Dreamcatcher Broadcasting LLC, regarding which Tribune will exercise its option to acquire from Dreamcatcher Broadcasting LLC.

BB. ''WTVR-TV'' means the CBS-affiliated broadcast television station bearing that call sign located in the Richmond-Petersburg, Virginia, DMA, owned by Defendant Tribune.

CC. ''WXMI'' means the FOX-affiliated broadcast television station bearing that call sign located in the Grand Rapids-Kalamazoo-Battle Creek, Michigan, DMA, owned by Defendant Tribune.

DD. ''WZDX'' means the FOX-affiliated broadcast television station bearing that call sign located in the Huntsville-Decatur-Florence, Alabama, DMA, owned by Defendant Nexstar.

III. *APPLICABILITY*

A. This Final Judgment applies to Defendants and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers.

IV. *DIVESTITURES*

A. Defendants are ordered and directed, within thirty calendar days after the Court's entry of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment to Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety calendar days in total, and shall notify the Court in such circumstances.

B. With respect to divestiture of the Divestiture Assets by Defendants, or by the Divestiture Trustee appointed pursuant to Section V of this Final Judgment, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of the Divestiture Assets for which no FCC order has issued until five days after such order is issued. Defendants agree to use their best efforts to divest the Divestiture Assets and to obtain all necessary FCC approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this Final Judgment.

C. In the event that Defendants are attempting to divest the WISH-TV or WNDY-TV Divestiture Assets to an Acquirer other than Circle City Broadcasting; the KSTU, WGNT, WTKR,

WTVR-TV, or WXMI Divestiture Assets to an Acquirer other than Scripps; or the KFSM-TV, KCWI-TV, WATN-TV, WCCT-TV, WLMT, WOI-DT, WNEP-TV, WPMT, WQAD, WTIC-TV or WZDX Divestiture Assets to an Acquirer other than TEGNA:

(1) Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets;

(2) Defendants shall inform any person making an inquiry regarding a possible purchase of the relevant Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment;

(3) Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the relevant Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine; and

(4) Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide each Acquirer and the United States information relating to the personnel involved in the operation and management of the relevant Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by any Acquirer to employ or contract with any Defendant employee whose primary responsibility relates to the operation or management of the relevant Divestiture Assets.

E. Defendants shall permit the prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirers that each asset will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. At the option of the respective Acquirer, Defendants shall enter into a transition services agreement with each Acquirer for a period of up to six months to facilitate the continuous operations of the relevant Divestiture Assets until the Acquirer can provide such capabilities independently. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for the services provided, and shall be subject to the approval of the United States, in its sole discretion. The United States in its sole discretion may approve one or more extensions of this agreement for a total of up to an additional six months, or, with respect to transition services provided by (1) Defendants to an Acquirer for Tribune's proprietary software; or (2) an Acquirer to Defendants for master control hub operating services and distribution services, for a total of up to an additional eighteen months.

I. Defendants shall warrant to the Acquirers (1) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, and (2) that, following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by the Divestiture Trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that the Divestiture Assets can and will be used by each Acquirer as part of a viable, ongoing commercial television broadcasting business. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States, after consultation with the Plaintiff States, that the Divestiture Assets will remain viable, and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. If any of the terms of an agreement between any Defendants and any Acquirer to effectuate the divestitures required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment shall determine Defendants' obligations. The divestitures, whether made pursuant to Section IV or Section V of this Final Judgment:

(1) shall be made to Acquirers that, in the United States' sole judgment, after consultation with the Plaintiff States, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the commercial television broadcasting business; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Plaintiff States, that none of the terms of any agreement between any Acquirer and Defendants give Defendants the ability unreasonably to raise the costs of the Acquirer, to lower the efficiency of the Acquirer, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. *APPOINTMENT OF DIVESTITURE TRUSTEE*

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A) and Paragraph IV(B), Defendants shall notify the United States and a Plaintiff State, if any subject Divestiture Asset is located in that Plaintiff State, of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets that have not yet been divested.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the relevant Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, after consultation with the Plaintiff States, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such

objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the relevant Divestiture Assets and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any agents and consultants retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any agents and consultants retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets subject to sale by the Divestiture Trustee and based on a fee arrangement providing the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agent's or consultant's compensation or other terms and conditions of engagement within fourteen calendar days of the appointment of the Divestiture Trustee, agent, or consultant, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three business days of hiring any other agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Plaintiff States setting forth the Divestiture Trustee's efforts to accomplish the relevant divestitures ordered under this Final Judgment. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the relevant Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such reports shall not be filed on the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute Divestiture Trustee.

VI. *NOTICE OF PROPOSED DIVESTITURE*

A. Within two business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States and the Plaintiff States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who tendered an offer for, or expressed an interest in or desire to acquire, any ownership interest in the relevant Divestiture Assets, together with full details of the same.

B. Within fifteen calendar days of receipt by the United States of such notice, the United States, in its sole discretion, after consultation with the Plaintiff States, may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirers. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not, in its sole discretion, after consultation with the Plaintiff States, it objects to the Acquirer or any aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. *FINANCING*

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. *HOLD SEPARATE*

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. *AFFIDAVITS*

A. Within twenty calendar days of the filing of the Complaint in this matter, and every thirty calendar days thereafter until the divestitures have been completed under Section IV and Section V of this Final Judgment, Defendants shall deliver to the United States and the Plaintiff States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, which shall describe the fact and manner of Defendants' compliance with Section IV and Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on information, shall be made within fourteen calendar days of receipt of such affidavit.

B. Within twenty calendar days after the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Paragraph IX(B) within fifteen calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. *COMPLIANCE INSPECTION*

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time that Defendants furnish information or documents to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. *NO REACQUISITION AND LIMITATIONS ON COLLABORATIONS*

A. During the term of this Final Judgment, Defendants may not (1) reacquire any part of the Divestiture Assets, unless approved by the United States in its sole discretion; (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person; (3) enter into any Cooperative Agreement, (except as provided in this Paragraph XI(A) or in Paragraph XI(B)), or conduct other business negotiations jointly with any Acquirer with respect to the Divestiture Assets divested to such Acquirer; or (4) provide financing or guarantees of financing with respect to the Divestiture Assets. The Cooperative Agreement prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (a) share news helicopters or (b) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion.

B. Paragraph XI(A) shall not prevent Defendants from entering into agreements to provide news programming to broadcast television stations included in the Divestiture Assets, provided that Defendants do not sell, price, market, hold out for sale, or profit from the sale of advertising associated with the news programming provided by Defendants under such agreements except by approval of the United States in its sole discretion.

XII. *RETENTION OF JURISDICTION*

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. *ENFORCEMENT OF FINAL JUDGMENT*

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the Final Judgment and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs, including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four years following the expiration of the Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in Paragraph XIII(C).

XIV. *EXPIRATION OF FINAL JUDGMENT*

Unless the Court grants an extension, this Final Judgment shall expire ten years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States, after consultation with the Plaintiff States, to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. *PUBLIC INTEREST DETERMINATION*

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____

United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF ILLINOIS, COMMONWEALTH OF PENNSYLVANIA, and COMMONWEALTH OF VIRGINIA, *Plaintiffs*, v. NEXSTAR MEDIA GROUP, INC. and TRIBUNE MEDIA COMPANY, Defendants.

Civil Action No. 1:19–cv–2295 (DLF)

COMPETITIVE IMPACT STATEMENT

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. *NATURE AND PURPOSE OF THE PROCEEDING*

On November 30, 2018, Defendant Nexstar Media Group, Inc. (''Nexstar'') agreed to acquire Tribune Media Company (''Tribune,'' and together with Nexstar, ''Defendants'') for approximately $6.4 billion. The United States filed a civil antitrust Complaint on July 31, 2019, seeking to enjoin the proposed merger. The Complaint alleges that the likely effect of this merger would be to substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in thirteen Designated Market Areas (''DMAs'' [3]): (1) Twelve DMAs in which Defendants license the television programming of NBC, CBS, ABC, and FOX (collectively, ''Big 4'') affiliate stations to cable, satellite, fiber optic television, and over-the-top providers (referred to collectively as multichannel video programming distributors, or ''MVPDs'') for retransmission to their subscribers (collectively referred to in this Competitive Impact Statement as the ''Big 4 Overlap DMAs''), and (2) those twelve DMAs plus the Indianapolis, Indiana DMA in which Defendants sell broadcast television spot advertising (collectively referred to in this Competitive Impact Statement as the ''Overlap DMAs'').

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest the following broadcast television stations (the ''Divestiture Stations'') to acquirers acceptable to the United States in its sole discretion: (i) WQAD-TV, located in the Davenport, Iowa-Rock Island-Moline, Illinois, DMA; (ii) WOI-DT and KCWI-TV, located in the Des Moines-Ames, Iowa, DMA; (iii) KFSM-TV, located in the Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas, DMA; (iv) WXMI, located in the Grand Rapids-Kalamazoo-Battle Creek, Michigan, DMA; (v) WPMT, located in the Harrisburg-Lancaster-Lebanon-York, Pennsylvania, DMA; (vi) WTIC-TV and WCCT-TV, located in the Hartford-New Haven, Connecticut, DMA; (vii) WZDX,

[3] A DMA is a geographic unit for which A.C. Nielsen Company—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission (''FCC'') also uses DMAs as geographic units with respect to its MVPD regulations.

located in the Huntsville-Decatur-Florence, Alabama, DMA; (viii) WNDY-TV and WISH-TV, located in the Indianapolis, Indiana, DMA; (ix) WATN-TV and WLMT, located in the Memphis, Tennessee, DMA; (x) WTKR and WGNT, located in the Norfolk-Portsmouth-Newport News, Virginia, DMA; (xi) WTVR-TV, located in the Richmond-Petersburg, Virginia, DMA; (xii) KSTU, located in the Salt Lake City, Utah, DMA; and (xiii) WNEP-TV, located in the Wilkes-Barre-Scranton, Pennsylvania, DMA. Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the Divestiture Stations are operated as competitively independent, economically viable, and ongoing business concerns, which will remain independent and uninfluenced by the non-owner Defendant, and that competition is maintained during the pendency of the required divestitures.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. *DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION*

A. *The Defendants and the Proposed Transaction*

Nexstar is a Delaware corporation with its headquarters in Irving, Texas. Nexstar owns 171 television stations in 100 DMAs, of which 136 stations are Big 4 affiliates. In 2018, Nexstar reported revenues of $2.8 billion.

Tribune is a Delaware corporation with its headquarters in Chicago, Illinois. Tribune owns 44 television stations in 33 DMAs, of which 27 stations are Big 4 affiliates. In 2018, Tribune earned revenues of more than $2.0 billion.

B. *Big 4 Television Retransmission Consent*

1. *Background*

MVPDs, such as Comcast, DirecTV, and Charter, typically pay the owner of each local Big 4 broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPD's subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers are set forth in a retransmission agreement. A retransmission agreement is negotiated directly between a broadcast station group, such as Nexstar or Tribune, and a given MVPD, and this agreement typically covers all of the station group's stations located in the MVPD's service area, or ''footprint.''

Each broadcast station group typically renegotiates retransmission agreements with the MVPDs every few years. If an MVPD and a broadcast station group cannot agree on a retransmission consent fee at the expiration of a retransmission agreement, the result may be a ''blackout'' of the broadcast group's stations from the particular MVPD—i.e., an open-ended period during which the MVPD may not distribute those stations to its subscribers, until a new contract is successfully negotiated.

2. *Relevant Markets*

Big 4 broadcast content has special appeal to televisioan viewers in comparison to the content that is available through other broadcast stations and cable channels. Big 4 stations usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly ranked primetime programs. Viewers typically consider the Big 4 stations to be close substitutes for one another. Because of Big 4 stations' popular national content and valued local coverage, MVPDs regard Big 4 programming as highly desirable for inclusion in the packages they offer subscribers. Non-Big 4 broadcast stations are typically not close substitutes for viewers of Big 4 stations. Stations that are affiliates of networks other than the Big 4, such as the CW Network, MyNetworkTV, or Telemundo, typically feature niche programming without local news or sports—or, in the case of Telemundo, aimed at a Spanish-speaking audience. Stations that are unaffiliated with any network are similarly unlikely to carry programming with broad popular appeal.

If an MVPD suffers a blackout of a Big 4 station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big 4 stations in the DMA to watch similar content, such as sports, primetime shows, and local news and weather. This willingness of viewers to switch between competing Big 4 broadcast stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MVPD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost. Due to the limited programming typically offered by non-Big 4 stations, viewers are much less likely to switch to a non-Big 4 station than to switch to other Big 4 stations in the event of a blackout of a Big 4 station. Accordingly, competition from non-Big 4 stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big 4 stations. For the same reasons, subscribers—and therefore MVPDs—generally do not view cable network programming as a close substitute for Big 4 network content. This is primarily because cable channels offer different content. For example, cable channels generally do not offer local news, which provides a valuable connection to the local community that is important to viewers of Big 4 stations.

Because viewers do not regard non-Big 4 broadcast stations or cable networks as close substitutes for the programming they receive from Big 4 stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big 4 television retransmission consent. Accordingly, a small but significant increase in the retransmission consent fees of Big 4 affiliates would not cause enough MVPDs to forego carrying the content of the Big 4 stations to make such an increase unprofitable for the Big 4 stations.

The relevant geographic markets for the licensing of Big 4 television retransmission consent are the individual DMAs in which such licensing occurs. The Complaint alleges a substantial reduction of competition in the market for the licensing of Big 4 television retransmission consent in the following twelve DMAs: (i) Davenport, Iowa-Rock Island-Moline, Illinois; (ii) Des Moines-Ames, Iowa; (iii) Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas; (iv) Grand Rapids-Kalamazoo-Battle Creek, Michigan; (v) Harrisburg-Lancaster-Lebanon-York, Pennsylvania; (vi) Hartford-New Haven, Connecticut; (vii) Huntsville-Decatur-Florence, Alabama; (viii) Memphis, Tennessee; (ix) Norfolk-Portsmouth-Newport News, Virginia; (x) Richmond-Petersburg, Virginia; (xi) Salt Lake City, Utah; and (xii) Wilkes Barre-Scranton, Pennsylvania (collectively, ''the Big 4 Overlap DMAs'').

In the event of a blackout of a Big 4 network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA. Thus, Big 4 viewers in one DMA cannot switch to Big 4 programming in another DMA in the face of a blackout.

Therefore, substitution to stations outside the DMA cannot discipline an increase in the fees charged for retransmission consent for broadcast stations in the DMA.

3. *Anticompetitive Effects*

In each of the Big 4 Overlap DMAs, Nexstar and Tribune each own at least one Big 4 affiliate broadcast television station. By combining the Defendants' Big 4 stations, the proposed merger would increase the Defendants' market shares in the licensing of Big 4 television retransmission consent in each Big 4 Overlap DMA, and would increase the market concentration in that business in each Big 4 Overlap DMA. The chart below summarizes the Defendants' approximate Big 4 retransmission consent market shares, and market concentrations measured by the widely used Herfindahl-Hirschman Index (''HHI'') [4], in each Big 4 Overlap DMA, before and after the proposed merger.

Big 4 overlap DMA [5]	Nexstar share (%)	Tribune share (%)	Merged share (%)	Pre-merger HHI	Post-merger HHI	HHI increase
Wilkes Barre, PA	54.0	24.7	78.7	3981	6645	2664
Ft. Smith, AR	63.4	15.0	78.4	4708	6613	1906
Norfolk, VA	56.0	21.1	77.1	4104	6465	2361
Grand Rapids, MI	43.4	16.3	59.7	2974	4391	1417
Hartford, CT	33.5	25.4	58.9	2636	4338	1702
Memphis, TN	38.4	17.6	56.1	2762	4118	1356
Davenport, IA	36.8	14.9	51.6	2744	3838	1094
Des Moines, IA	34.5	13.9	48.4	2798	3756	958
Huntsville, AL	32.5	16.6	49.1	2630	3710	1080
Salt Lake City, UT	32.1	15.5	47.5	2691	3683	992
Harrisburg, PA	25.3	22.1	47.4	2553	3670	1117
Richmond, VA	28.0	16.9	44.9	2672	3617	945

As indicated by the preceding chart, in each Big 4 Overlap DMA the post-merger HHI would exceed 2,500 and the merger would increase the HHI by more than 200 points. As a result, the proposed merger is presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission.

The proposed merger would enable Nexstar to black out more Big 4 stations simultaneously in each of the Big 4 Overlap DMAs than either Nexstar or Tribune could black out independently today, likely leading to increased retransmission consent fees to any MVPD whose footprint includes any of the Big 4 Overlap DMAs. Retransmission consent fees generally are passed through to an MVPD's subscribers in the form of higher subscription fees or as a line item on their bills.

C. *Broadcast Television Spot Advertising*

1. *Background*

Broadcast television stations, including both Big 4 broadcast stations and non-Big 4 stations in the Overlap DMAs, sell advertising ''spots'' during breaks in their programming. Advertisers purchase spots from a broadcast station to communicate with viewers within the DMA in which the broadcast television station is located. Broadcast television spot advertising is distinguished from ''network'' advertising, which consists of advertising time slots sold on nationwide broadcast networks by those networks, and not by local broadcast stations or their representatives. Nexstar and Tribune compete with one another to sell broadcast television spot advertising in each DMA in which both Defendants have stations.

2. *Relevant Markets*

Broadcast television spot advertising, including spot advertising on both Big 4 and non-Big 4 broadcast stations, constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act. Advertisers' inability or unwillingness to substitute to other types of advertising in response to a price increase in broadcast television spot advertising supports this relevant market definition.

Typically, an advertiser purchases broadcast television advertising spots as one component of an advertising strategy that may also include cable spots, newspaper advertisements, billboards, radio spots, digital advertisements, email advertisements, and direct mail. Different components of an advertising strategy generally target different audiences and serve distinct purposes. Advertisers that advertise on broadcast stations do so because the stations offer popular programming such as local news, sports, and primetime and syndicated shows that are especially attractive to a broad demographic base and a large audience of viewers. Other categories of advertising may offer different characteristics, making them potential complements to broadcast television advertising, but not close substitutes. For example, ads associated with online search results target individual consumers or respond to specific keyword searches, whereas broadcast television advertising reaches a broad audience throughout a DMA. Technological developments may bring various advertising categories into closer competition with each other. For example, broadcasters and cable networks are developing technology to make their spot advertising addressable, meaning that broadcasters could deliver targeted advertising in live broadcast and on-demand formats to smart televisions or streaming devices. For certain advertisers, these technological changes may make other categories of advertising closer substitutes for advertising on broadcast television in the future. However, at this time, for many broadcast television spot advertising advertisers, these projected developments are insufficient to mitigate the effects of the merger in the Overlap DMAs.

[4] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

[5] In this chart and the one below, sums that do not agree precisely reflect rounding.

MVPDs sell spot advertising to be shown during breaks in cable network programming. For viewers, these advertisements are similar to broadcast ads. That, however, does not mean that cable television spot advertising should be included in the product market. For the following reasons, cable television spot advertising is at this time a relatively ineffective substitute for broadcast television spot advertising for most advertisers. First, broadcast television spot advertising is a more efficient option than cable television spot advertising for many advertisers. Because broadcast television offers highly rated programming with broad appeal, each broadcast television advertising spot typically offers the opportunity to reach more viewers (more ''ratings points'') than a single spot on a cable channel. By contrast, MVPDs offer dozens of cable channels with specialized programs that appeal to niche audiences. This fragmentation allows advertisers to target narrower demographic subsets by buying cable spots on particular channels, but it does not meet the needs of advertisers who want to reach a large percentage of a DMA's population. Second, households that have access to cable networks are divided among multiple MVPDs within a DMA. In some DMAs, MVPDs sell some spot advertising through consortia called ''interconnects.'' Sometimes these interconnects include all of the largest MVPDs in a DMA, approaching but not matching broadcast stations' reach. But in other, especially smaller DMAs, the interconnect only contains a subset of MVPDs, which reduces the reach of the interconnect's advertisements. In contrast, broadcast television spot advertising reaches all households that subscribe to an MVPD and, through an over-the-air signal, most households with a television that do not. Finally, MVPDs' inventory of cable television spot advertising is limited—typically to two minutes per hour—contrasting sharply with broadcast stations' much larger number of minutes per hour. The inventory of DMA-wide cable television spot advertising is substantially further reduced by the large portion of those spots allocated to local zone advertising, in which an MVPD sells spots by geographic zones within a DMA, allowing advertisers to target smaller geographic areas. Due to the limited inventories and lower ratings associated with cable television spot programming, cable television spot advertisements cannot offer a sufficient volume of ratings points, or broad enough household penetration, to provide a viable alternative to broadcast television spot advertising, at this time. Because of these limitations, MVPDs and interconnects would be unable to expand output or increase sales sufficiently to defeat a small but significant increase in the prices charged for broadcast television spot advertising in a given DMA.

Digital advertising is not a sufficiently close substitute for broadcast television spot advertising. Some digital advertising, such as static and floating banner advertisements, static images, text advertisements, wallpaper advertisements, pop-up advertisements, flash advertisements, and paid search results, lacks the combination of sight, sound, and motion that makes television spot advertising particularly impactful and memorable, and therefore effective for advertisers. Digital video advertisements, on the other hand, do allow for a combination of sight, sound, and motion, and on this basis are more comparable to broadcast television spot advertising than other types of digital advertising, but are still not close substitutes for broadcast television spot advertising for the reasons stated below. First, digital advertisements typically reach a different audience than broadcast television spot advertising. Whereas advertisers use broadcast television spots to reach a large percentage of households in a DMA, advertisers use digital advertising to reach a variety of different audiences. While a small portion of advertisers purchase DMA-wide advertisements on digital platforms, digital advertisements usually are targeted either very broadly, such as nationwide or regional, or to a smaller geographic target, such as a city or a zip code, or to narrow demographic subsets of a population. Second, inventory of ad-supported, high-quality, long-form video on the internet is limited. Advertisers see value to advertising on video that is watched by the audience they seek to target. High-quality, long-form video is the most similar content to broadcast television programming available on the internet. The most popular high-quality, long-form video available on the internet is provided through ad-free subscription services (like Netflix or Amazon Prime), over-the-top MVPDs that sell cable television spot advertisements (like Sling and YouTube TV), or sold directly by the networks on their own network sites. The remaining inventory of digital advertisements attached to high-quality, long-form video on the internet, which is primarily sold by digital advertising platforms, is small today. Because of these limitations, digital video advertising would be unable to expand output or increase sales sufficiently to defeat a small but significant increase in the prices charged for broadcast television spot advertising in a given DMA.

Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also do not constitute effective substitutes for broadcast television spot advertising. These forms of media do not reach as many local viewers or drive brand awareness to the same extent as broadcast television does. Broadcast television spot advertising possesses a unique combination of attributes that advertisers value in a way that sets it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful. For all of these reasons, advertisers likely would not respond to a small but significant non-transitory increase in the price of broadcast television spot advertising by switching to other forms of advertising—such as cable, digital, print, radio, or billboard advertising—in sufficiently large numbers to make the price increase unprofitable.

While cable spot or digital advertising may constrain broadcast television spot advertising prices in the future, it does not do so today. On a cost-per-point basis (cost to reach one percent of a relevant target population), over the last few years broadcast television spot advertising prices have generally remained steady or increased. If cable spot or digital advertising was a close and robust competitor to broadcast television spot advertising, then, all else being equal, this competition from cable spot or digital advertising would place downward pressure on broadcast television spot advertising pricing. But they have not had this effect.

The differentiation between broadcast television spot advertising and cable spot and digital advertising bears out in negotiations between broadcasters and advertisers. Advertisers usually will put an advertising buy out to bid to many or all broadcast stations in a DMA, and will not include MVPDs or digital advertisers in that same bid. In negotiations with broadcast stations, advertisers regularly discuss offered prices and opportunities from other broadcast stations in the same DMA to try to bargain down price, but they rarely discuss price offers or opportunities from MVPDs or digital advertisers in those negotiations. When a broadcaster salesperson internally analyzes the station's performance on any particular buy, the salesperson

typically looks at the percentage of the buy that was allocated to each broadcast station, adding up to 100% of the buy. The salesperson typically does not consider any allocation of an advertiser's spending on cable or digital advertising. Likewise, if an advertiser reports to a broadcaster salesperson the percentage of a buy that the broadcaster received, the advertiser typically reports the broadcaster's percentage of the amount awarded to all broadcast stations in the DMA, but does not include any amount spent on cable or digital advertising.

Internally, broadcasters make most of their competitor comparisons against other broadcasters in the same DMA, not against MVPDs in that DMA or digital advertisers. When reporting to their station managers and corporate headquarters, broadcast station sales executives regularly report on their performance vis-à-vis other broadcast stations in the DMA; they rarely report on their performance against cable or digital platforms. When looking for new business, broadcast stations use third-party services to identify advertisers advertising on those other broadcast stations, but do not subscribe to similar services for cable or digital advertising. Similarly, the national sales representation firms regularly report to broadcast stations about competition from representatives for other broadcasters in the same DMA, but rarely report on competition from representatives for cable or digital platforms. Many broadcasters use a third-party data analysis service to help set their spot advertising rate cards; that service uses market share estimates from other broadcasters as input data to generate the rate cards, but does not use market share estimates from cable or digital advertising platforms.

The relevant geographic markets for the sale of broadcast television spot advertising are the individual DMAs in which such advertising is viewed. The Complaint alleges a substantial reduction of competition in the market for sale of broadcast television spot advertising in the following thirteen DMAs: (i) Davenport, Iowa-Rock Island-Moline, Illinois; (ii) Des Moines-Ames, Iowa; (iii) Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas; (iv) Grand Rapids-Kalamazoo-Battle Creek, Michigan; (v) Harrisburg-Lancaster-Lebanon-York, Pennsylvania; (vi) Hartford-New Haven, Connecticut; (vii) Huntsville-Decatur-Florence, Alabama; (viii) Indianapolis, Indiana; (ix) Memphis, Tennessee; (x) Norfolk-Portsmouth-Newport News, Virginia; (xi) Richmond-Petersburg, Virginia; (xii) Salt Lake City, Utah; and (xiii) Wilkes-Barre-Scranton, Pennsylvania (collectively, ''the Overlap DMAs''). For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience. The signals of broadcast television stations located outside of the DMA generally do not reach any significant portion of the target DMA through either over-the-air signal or MVPD distribution. Accordingly, a small but significant increase in the spot advertising prices of stations broadcasting into the DMA would not cause a sufficient number of advertisers to switch to stations outside the DMA to make such an increase unprofitable for the stations.

3. *Anticompetitive Effects*

The chart below summarizes Defendants' approximate market shares and the result of the transaction on the HHIs in the sale of broadcast television spot advertising in each of the Overlap DMAs.

Overlap DMA	Nexstar share (%)	Tribune share (%)	Merged share (%)	Pre-merger HHI	Post-merger HHI	HHI increase
Wilkes Barre, PA	35.8	47.6	83.4	3749	7161	3412
Norfolk, VA	44.0	31.4	75.4	3277	6038	2761
Ft. Smith, AR	29.1	41.3	70.3	3361	5761	2400
Davenport, IA	27.0	27.1	54.2	3568	5035	1467
Grand Rapids, MI	36.0	19.0	55.0	2700	4065	1365
Des Moines, IA	11.2	34.6	45.8	3235	4009	774
Richmond, VA	20.9	29.9	50.8	2733	3981	1248
Huntsville, AL	13.9	33.0	46.9	2786	3704	918
Memphis, TN	14.5	33.3	47.9	2558	3527	969
Harrisburg, PA	21.8	20.8	42.5	2524	3427	903
Indianapolis, IN	13.1	31.0	44.2	2577	3393	815
Hartford, CT	22.7	20.6	43.3	2306	3240	934
Salt Lake City, UT	16.0	24.1	40.0	2329	3098	769

Defendants' large market shares reflect the fact that, in each Overlap DMA, Nexstar and Tribune each own one or more significant broadcast stations

As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold above which a transaction is presumed to enhance market power and harm competition. Defendants' proposed transaction is thus presumptively unlawful in each Overlap DMA. In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would combine Nexstar's and Tribune's broadcast television stations, which are close substitutes and generally vigorous competitors in the sale of broadcast television spot advertising.

In each Overlap DMA, Defendants' broadcast stations compete head-to-head in the sale of broadcast television spot advertising. Advertisers obtain lower prices as a result of this competition. In particular, advertisers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups—''buying around'' the station that raises its prices. This practice allows the advertisers either to avoid the first station's price increase, or to pressure the first station to lower its prices.

If Nexstar acquires Tribune's stations, advertisers seeking to reach audiences in the Overlap DMAs would have fewer competing broadcast television alternatives available to meet their advertising needs, and would find it more difficult and costly to buy around higher prices imposed by the combined stations. This would likely result in increased advertising prices, lower quality local programming to which the spot advertising is attached (for example, less investment in local news), and less innovation in providing advertising solutions to advertisers.

D. *Entry*

Entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed merger's likely anticompetitive effects in the relevant markets. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all.

III. *EXPLANATION OF THE PROPOSED FINAL JUDGMENT*

The divestitures required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by maintaining the Divestiture Stations as independent and economically viable competitors. The proposed Final Judgment requires Nexstar, within thirty days after the entry of the Hold Separate by the Court, to divest the station or stations owned by either Nexstar or Tribune in each of the Overlap DMAs, as shown in the following chart:

Overlap DMA	Divestiture stations	Primary affiliations of divestiture stations	Current owner of divestiture stations
Wilkes Barre, PA	WNEP-TV	ABC	Tribune. [6]
Norfolk, VA	WTKR and WGNT	CBS/CW	Tribune. [7]
Ft. Smith, AR	KFSM-TV	CBS	Tribune.
Davenport, IA	WQAD-TV	ABC	Tribune.
Grand Rapids, MI	WXMI	FOX	Tribune.
Des Moines, IA	WOI-DT and KCWI-TV	ABC/CW	Nexstar.
Richmond, VA	WTVR-TV	CBS	Tribune.
Huntsville, AL	WZDX	FOX	Nexstar.
Memphis, TN	WATN-TV and WLMT	ABC/CW	Nexstar.
Harrisburg, PA	WPMT	FOX	Tribune.
Indianapolis, IN	WNDY-TV and WISH-TV	MyNetworkTV/CW	Nexstar.
Hartford, CT	WTIC-TV and WCCT-TV	FOX/CW	Tribune.
Salt Lake City, UT	KSTU	FOX	Tribune.

The Divestiture Stations must be divested in such a way as to satisfy the United States in its sole discretion that the Divestiture Stations can and will be operated by each purchaser as part of a viable, ongoing commercial television broadcasting business with the intent and capability to compete effectively in the applicable DMA in (1) the licensing of Big 4 network content to MVPDs for distribution to their subscribers (except as to the Indianapolis DMA), and (2) the sale of broadcast television spot advertising to advertisers interested in reaching viewers in the DMA. The United States has determined that the following companies are acceptable purchasers of Divestiture Stations: Circle City Broadcasting I, Inc.; The E.W. Scripps Company; and TEGNA Inc. (respectively, together with their subsidiaries and affiliated entities and individuals, ''Circle City,'' ''Scripps,'' and ''TEGNA''). The following table sets out the proposed purchaser for each Divestiture Station.

Overlap DMA	Divestiture stations	Proposed purchaser
Wilkes Barre, PA	WNEP-TV	TEGNA.
Norfolk, VA	WTKR and WGNT	Scripps.
Ft. Smith, AR	KFSM-TV	TEGNA.
Davenport, IA	WQAD-TV	TEGNA.
Grand Rapids, MI	WXMI	Scripps.
Des Moines, IA	WOI-DT and KCWI-TV	TEGNA.
Richmond, VA	WTVR-TV	Scripps.
Huntsville, AL	WZDX	TEGNA.
Memphis, TN	WATN-TV and WLMT	TEGNA.
Harrisburg, PA	WPMT	TEGNA.
Indianapolis, IN	WNDY-TV and WISH-TV	Circle City.
Hartford, CT	WTIC-TV and WCCT-TV	TEGNA.
Salt Lake City, UT	KSTU	Scripps.

Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the purchasers.

To facilitate the immediate and continuous operations of the relevant Divestiture Stations until the acquirer can provide such capabilities independently, Paragraph IV(H) of the proposed Final Judgment requires Defendants, at each acquirer's option, to enter into a transition services agreement. After an initial period of six months, a transition services agreement may be extended by an additional six months, subject to the United States' sole discretion, with exceptions regarding Tribune proprietary software and master control and hubbing services and distribution services, which can be extended for up to an additional eighteen months, subject to the United States' sole discretion.

[6] WNEP-TV is currently owned by Dreamcatcher Broadcasting LLC; however, Tribune will exercise its option to acquire the station prior to the divestiture.

[7] WTKR and WGNT are currently owned by Dreamcatcher Broadcasting LLC; however, Tribune will exercise its option to acquire the stations prior to the divestiture.

If Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide monthly reports to the United States and the Plaintiff States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore all competition that the Complaint alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States, after consultation with the Plaintiff States, to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. *REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS*

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. *PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT*

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Owen M. Kendler, Chief, Media, Entertainment, & Professional Services Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW, Suite 4000, Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the Parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. *ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT*

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Nexstar's acquisition of Tribune. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for (1) the provision of the licensing of Big 4 network content to MVPDs for distribution to their subscribers in each of the Big 4 Overlap DMAs, and (2) the sale of broadcast television spot advertising to advertisers interested in reaching viewers in each of the Overlap DMAs. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. *STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT*

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8]

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the '''reaches of the public interest.''' *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only

[8] *See also BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first nacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make ts public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000).

VIII. *DETERMINATIVE DOCUMENTS*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 1, 2019
Respectfully submitted,

Lee F. Berger (D.C. Bar # 482435) *
Trial Attorney, Media, Entertainment, and Professional Services Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW, Suite 4000, Washington, DC 20530, Phone: 202-598-2698, Email: *Lee.Berger@usdoj.gov*
* Attorney of Record

[FR Doc. 2019–17522 Filed 8–14–19; 8:45 am]
BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

AGENCY: Office of Workers' Compensation Programs, Department of Labor.

ACTION: Announcement of telephonic meeting of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The Advisory Board will meet September 4, 2019, via teleconference, from 1:00 p.m. to 4:00 p.m. Eastern time.

Submissions of comments and materials for the record, and requests for special accommodations: You must submit (postmark, send, transmit) comments, materials, and requests for special accommodations for the meetings by August 28, 2019.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Ms. Laura McGinnis, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Ave. NW, Washington, DC 20210; telephone (512) 396–6652; email *mcginnis.laura@dol.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board will meet telephonically on Wednesday, September 4, 2019, from 1:00 p.m. to 4:00 p.m. Eastern time. Advisory Board members will attend the meeting by teleconference. The teleconference number and other details for participating remotely will be posted on the Advisory Board's website, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* 72 hours prior to the commencement of the first meeting date. Advisory Board meetings are open to the public.

The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2024.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Discuss any recommendation responses provided by the program and status of outstanding recommendations;
- Discuss data provided by the program at the request of the Board;
- Discuss cases provided by the program at the request of the Board;
- Discuss recent program changes; and
- Administrative issues raised by Advisory Board functions and future Advisory Board activities.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP will post the transcripts and minutes on the Advisory Board web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions, and Access to the Public Record

Advisory Board meetings: The Advisory Board will meet via teleconference on Wednesday, September 4, 2019, from 1:00 p.m. to 4:00 p.m. Eastern time. All Advisory Board meetings are open to the public. The teleconference number and other details for listening to the meeting will be posted on the Advisory Board's website no later than 72 hours prior to the meeting, at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

Requests for special accommodations: Please submit requests for special accommodations to access the telephonic Advisory Board meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S–3524, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210; telephone (202) 343–5580; email *EnergyAdvisoryBoard@dol.gov.*

Submission of written comments for the record: You may submit written comments, identified as for the Advisory Board and with the meeting date of September 4, 2019, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify

in the email subject line, ''Advisory Board Meeting September 4, 2019'').

• *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays.

Comments must be received by August 28, 2019. OWCP will make available publically, without change, any written comments, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

For further information, you may contact Douglas Fitzgerald, Designated Federal Officer, at *fitzgerald.douglas@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580.

This is not a toll-free number.

Signed at Washington, DC, this 9th day of August, 2019.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2019–17528 Filed 8–14–19; 8:45 am]

BILLING CODE 4510–24–P

LEGAL SERVICES CORPORATION

Notice to LSC Grantees of Application Process For Subgranting Special Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Notice of application dates and format for applications to make subgrants of LSC Special Grant Funds, including Technology Initiative Grant, Pro Bono Innovation Fund, and Disaster Relief Grant funds.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people. LSC is announcing the submission dates for applications to make subgrants of its Special Grant funds. LSC is also providing information about where applicants may locate subgrant application forms and directions for providing the information required in the application.

DATES: See **SUPPLEMENTARY INFORMATION** section for application dates.

ADDRESSES: Legal Services Corporation—Office of Compliance and Enforcement, 3333 K Street NW, Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Megan Lacchini, Office of Compliance and Enforcement at *lacchinim@lsc.gov* or (202) 295–1506, or visit the LSC website at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant.*

SUPPLEMENTARY INFORMATION: Under 45 CFR part 1627, LSC must publish, on an annual basis, ''notice of the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's website.'' 45 CFR 1627.4(b). This Notice and the publication of the Subgrant Application Forms on LSC's website satisfy § 1627.4(b)'s notice requirement for LSC Special Grant programs. Only current or prospective recipients of LSC Special Grants may apply for approval to subgrant these funds.

An applicant must submit an application to make a subgrant of LSC Special Grant funds at least 45 days in advance of the subgrant's proposed effective date. 45 CFR 1627.4(b)(2).

Applicants must submit applications at *https://lscgrants.lsc.gov.* Applicants may access the application under the ''Subgrants'' heading on their ''LSC Grants'' home page. Applicants may initiate an application by selecting ''Initiate Subgrant Application.'' Applicants must then provide the information requested in the LSC Grants data fields, located in the Subrecipient Profile, Subgrant Summary, and Subrecipient Budget screens, and upload the following documents:

• A draft Subgrant Agreement with the required terms provided in the Special Grant Subgrant Agreement Template (''Agreement Template''); and

• Inquiries for Applications to Subgrant LSC Special Grant Funds (''Inquiries'').

Applicants seeking to subgrant to an organization that is not a current LSC grantee must also upload:

• The subrecipient's accounting manual (or letter indicating that the subrecipient does not have one and why);

• The subrecipient's most recent audited financial statement (or letter indicating that the subrecipient does not have one and why);

• The subrecipient's current cost allocation policy (or letter indicating that the subrecipient does not have one and why);

• The subrecipient's current fidelity bond policy (or letter indicating that the subrecipient does not have one and why);

• The subrecipient's conflict of interest policy (or letter indicating that the subrecipient does not have one and why); and

• The subrecipient's whistleblower policy (or letter indicating that the subrecipient does not have one and why).

The Agreement Template and Inquiries are available on LSC's website at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant.* LSC encourages applicants to use LSC's Agreement Template as a model subgrant agreement. If the applicant does not, the proposed agreement must include, at a minimum, the substance of the provisions of the Template.

Once submitted, LSC will evaluate the application and provide applicants with instructions on any needed modifications to the information, documents, or Draft Agreement provided with the application. The applicant must then upload a final and signed subgrant agreement through LSC Grants. This can be done by selecting ''Upload Signed Agreement'' to the right of the application ''Status'' under the ''Subgrant'' heading on an applicant's LSC Grants home page.

As required by 45 CFR 1627.4(b)(3), LSC will inform applicants of its decision to disapprove, approve, or request modifications to the subgrant no later than the subgrant's proposed effective date.

Dated: August 12, 2019.

Stefanie Davis,

Assistant General Counsel.

[FR Doc. 2019–17534 Filed 8–14–19; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–046)]

Notice of Centennial Challenges Space Robotics Challenge Phase 2; Correction

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: The National Aeronautics and Space Administration (NASA) is correcting a document that appeared in the **Federal Register** on August 9, 2019, concerning Phase 2 of the Space Robotics Challenge is open, and teams that wish to compete may now register.

This document is the correct version. An update of the registration link was added.

DATES: Challenge registration for Phase 2 opens August 12, 2019, and will remain open until 5:00 p.m. Central Time on December 20, 2019. No further requests for registration will be accepted after this date.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the Space Robotics Challenge, please visit: *www.spaceroboticschallenge.com-https://ninesights.ninesigma.com/servlet/hype/IMT?userAction=Browse&documentId=d4414ecdb345e2190f661e20df641dee&templateName=&documentTableId=3422744977151222846*.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 9, 2019, in FR Document 2019–17061, in the second column on page 39377, under For Further Information, II. Eligibility to Participate and Win Prize Money (3), and III Official Rules, add the registration link.

II. Eligibility To Participate and Win Prize Money

The eligibility requirements (including requirements for foreign participation) can be found on the official challenge site: *www.spaceroboticschallenge.com-https://ninesights.ninesigma.com/servlet/hype/IMT?userAction=Browse&documentId=d4414ecdb345e2190f661e20df641dee&templateName=&documentTableId=3422744977151222846*.

III. Official Rules

The complete official rules for the Space Robotics Challenge can be found at: *www.spaceroboticschallenge.com-https://ninesights.ninesigma.com/servlet/hype/IMT?userAction=Browse&documentId=d4414ecdb345e2190f661e20df641dee&templateName=&documentTableId=3422744977151222846*.

Cheryl Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2019–17469 Filed 8–14–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. These meetings will primarily take place at NSF's headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF website: *https://www.nsf.gov/events/advisory.jsp*. This information may also be requested by telephoning, 703/292–8687.

Dated: August 12, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019–17520 Filed 8–14–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 12, 19, 26, September 2, 9, 16, 23, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 12, 2019

Wednesday, August 14, 2019

8:55 a.m.—Affirmation Session (Public Meeting) (Tentative)

Entergy Nuclear Operations, Inc., Entergy Nuclear Generation Company, Holtec International, and Holtec Decommissioning International, LLC (Pilgrim Nuclear Power Station)—License Transfer

Commonwealth of Massachusetts Motion to Stay Proceeding Pending Settlement Negotiations (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Additional Information: By a vote of 4–0 on August 12 and 13, 2019, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on August 14, 2019.

Wednesday, August 14, 2019

9:00 a.m.—Hearing on Early Site Permit for the Clinch River Nuclear Site: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Mallecia Sutton: 301–415–0673)

This hearing will be webcast live at the Web address—*http://www.nrc.gov/*.

Week of August 19, 2019—Tentative

There are no meetings scheduled for the week of August 19, 2019.

Week of August 26, 2019—Tentative

There are no meetings scheduled for the week of August 26, 2019.

Week of September 9, 2019—Tentative

Monday, September 9, 2019

10:00 a.m.—NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852

Tuesday, September 10, 2019

10:00 a.m.—Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of September 16, 2019—Tentative

There are no meetings scheduled for the week of September 16, 2019.

Week of September 23, 2019—Tentative

There are no meetings scheduled for the week of September 23, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 13th day of August 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–17640 Filed 8–13–19; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33587; File No. 812–15041]

Forum Funds, et al.

August 12, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act.

The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies that are outside of the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

Applicants: Forum Funds (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end investment company with multiple series; Absolute Investment Advisers LLC, a Massachusetts limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Initial Adviser,''), and Foreside Fund Services, LLC (the ''Distributor''), a Delaware limited liability company registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'').

Filing Dates: The application was filed on June 17, 2019 and amended on July 26, 2019.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 6, 2019, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Stacy L. Fuller, Esq., K&L Gates LLP, 1601 K Street NW, Washington, DC 20006; Zachary R. Tackett, Esq., Atlantic Fund Administration, LLC, Three Canal Plaza, Portland, ME 04101; and David Faherty, Esq., Absolute Investment Advisers LLC, 4 North Street, Suite 2, Hingham, MA 02043.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order to permit (a) registered open-end management investment companies (the ''Investing Funds'') that are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust, to acquire shares in series of the Trust (the ''Funds'') [1] in excess of the limits in section 12(d)(1)(A) of the Act [2] and (b) the Funds, any principal underwriter for a Fund, and any broker or dealer registered under the Exchange Act (a ''Broker'') to sell shares of the Funds to the Investing Funds in excess of the limits of section 12(d)(1)(B) of the Act. Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit a Fund to sell its shares to, and redeem its shares from, an Investing Fund.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or in connection with certain services, transactions, and underwritings; (ii) excessive layering of fees; and (iii) overly complex fund structures, which are the concerns

[1] Applicants request that the relief apply to: (1) Each registered, open-end management investment company or series thereof that currently or subsequently is part of the same 'group of investment companies,' within the meaning of Section 12(d)(1)(G)(ii) of the Act, as the Trust and is advised by the Initial Adviser or its successor or any other investment adviser controlling, controlled by or under common control with the Initial Adviser or its successor (each, including the Initial Adviser, an ''Adviser'') (included in the term 'Funds'); (2) each Investing Fund that enters into a Participation Agreement (as defined in the Application) with a Fund to purchase shares of the Fund; and (3) any principal underwriter to a Fund or Broker selling shares of a Fund. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Certain of the Funds created in the future may be registered under the Act as open-end management investment companies and may have received exemptive relief to permit their shares to be listed and traded on a national securities exchange at negotiated prices.

underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17557 Filed 8–14–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Advisers Act Release No. 5317]

Notice of Intention To Cancel Registrations of Certain Investment Advisers Pursuant to Section 203(h) of the Investment Advisers Act of 1940

August 12, 2019.

Notice is given that the Securities and Exchange Commission (the ''*Commission*'') intends to issue an order or orders, pursuant to section 203(h) of the Investment Advisers Act of 1940 (the ''*Act*''), cancelling the registrations of the investment advisers whose names appear in the attached Appendix, hereinafter referred to as the ''*registrants*.''

Section 203(h) of the Act provides, in pertinent part, that if the Commission finds that any person registered under section 203 of the Act, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A of the Act, the Commission shall by order cancel the registration of such person.

Each registrant listed in the attached Appendix has (a) not filed a Form ADV amendment with the Commission as required by rule 204–1 under the Act and appears to be no longer in business as an investment adviser and/or (b) indicated on Form ADV that it is no longer eligible to remain registered with the Commission as an investment adviser but has not filed Form ADV–W to withdraw its registration. Accordingly, the Commission believes that reasonable grounds exist for a finding that these registrants are no longer in existence, are not engaged in business as investment advisers, or are prohibited from registering as investment advisers under section 203A of the Act, and that their registrations should be cancelled pursuant to section 203(h) of the Act.

Notice is also given that any interested person may, by September 11, 2019, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation of the registration of any registrant listed in the attached Appendix, accompanied by a statement as to the nature of such person's interest, the reason for such person's request, and the issues, if any, of fact or law proposed to be controverted. The writer may request to be notified if the Commission should order a hearing thereon. Any such communication should be addressed to the Commission's Secretary at the address below.

At any time after September 11, 2019, the Commission may issue an order or orders cancelling the registrations of any or all of the registrants listed in the attached Appendix, upon the basis of the information stated above, unless an order or orders for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any registrant whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's Rules of Practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Alexis Palascak, Senior Counsel, at 202–551–6999; U.S. Securities and Exchange Commission, Division of Investment Management, Office of Investment Adviser Regulation, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[1]

Jill M. Peterson,

Assistant Secretary.

[*Appendix follows.*]

Appendix

SEC No.	Full legal name
801–72892	Harrington Capital Management, LLC.
801–108222 ...	Pacific Point Advisors, LLC.
801–71350	UrbanAmerica Advisors, LLC.
801–71377	UrbanAmerica Principals, LLC.
801–71372	UrbanAmerica Principals II, LLC.
801–71404	UrbanAmerica Principals III, LLC.

[FR Doc. 2019–17530 Filed 8–14–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86618; File No. SR–NYSENAT–2019–18]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

August 9, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 1, 2019, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 17 CFR 200.30–5(e)(2).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (''Fee Schedule'') to (1) offer one general rate for adding displayed and non-displayed liquidity; (2) revise the requirements to qualify for Adding Tier 1, Adding Tier 2 and Adding Tier 3 and the rates available under those tiers; (3) offer a new Non-Displayed Adding Tier 1 rate; (4) delete current Adding Tier 4, Step Up Adding Tier 1 and Step Up Adding Tier 2; (5) revise the requirements to qualify for Taking Tier 1 and Taking Tier 2 and increase the credits available under those tiers and Taking Tier 3; and (6) make certain non-substantive changes to the presentation of the Fee Schedule. The Exchange proposes to implement the rule change on August 1, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to:

(1) Offer one general rate for adding displayed and non-displayed liquidity. Specifically, the Exchange proposes to offer a single general fee of $0.0028 per share for orders executed on the Exchange that provide liquidity in securities priced at or above $1.00, which would be applicable regardless of whether an execution results from a displayed or non-displayed order that provided liquidity. This general rate would apply unless an ETP Holder qualifies for one of the tiered rates;

(2) Revise the requirements to qualify for Adding Tier 1, Adding Tier 2 and Adding Tier 3 and the rates available under those tiers. Specifically, an ETP Holder would qualify for Adding Tier 1, Adding Tier 2, and Adding Tier 3 if its average daily volume (''ADV'') of shares executed on the Exchange that provide liquidity meet specified percentage thresholds. An ETP Holder that meets these thresholds would be charged a revised per share single rate of $0.0020, $0.0024, $0.0026 under Adding Tier 1, Adding Tier 2, and Adding Tier 3, respectively, for orders that provide displayed liquidity on Tapes A, B and C. The current separate Adding Tier 1, Adding Tier 2, and Adding Tier 3 fees for Non-displayed liquidity and BBO setting interest would be eliminated. The current rate for MPL Orders would remain unchanged;

(3) Offer a new Non-Displayed Adding Tier 1 rate of $0.0026 for Tapes A, B and C if an ETP Holder's ADV of shares executed on the Exchange that provide liquidity meet specified percentage thresholds;

(4) Delete current Adding Tier 4, Step Up Adding Tier 1 and Step Up Adding Tier 2 and associated footnotes * and **;

(5) Revise the requirements to qualify for Taking Tier 1 and Taking Tier 2, and increase the credits available under those Tiers and Taking Tier 3. Specifically, an ETP Holder would qualify for Taking Tier 1 and Taking Tier 2 (which will be renamed as Removing Tiers) based on whether its ADV of shares executed on the Exchange that remove liquidity meet specified percentage thresholds. The Exchange proposes to increase the per share credits that would be available to an ETP Holder that qualifies under Removing Tier 1, Removing Tier 2, and Removing Tier 3 to a single rate of $0.0030, $0.00275, and $0.0025 respectively, for orders that remove liquidity from the Exchange. The credit for MPL Orders that remove liquidity from the Exchange would remain unchanged; and

(6) Make certain non-substantive changes to the presentation of the Fee Schedule by consolidating current text relating to Transaction Fees under Section I of the Fee Schedule, adding defined terms to provide for consistent use of terminology, and adding new headings under that Section of the Fee Schedule.

The Exchange proposes to implement the rule change on August 1, 2019.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.'' [4]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or including auction volume).[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in June 2019, the Exchange had 1.2% market share of executed volume of equity trades (excluding auction volume), which was down from 1.5% in March 2019.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange trading venues to which a firm routes order flow. These fees vary month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange utilizes a ''taker-maker'' or inverted fee model to attract orders that provide liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange charges fees for order flow that provides liquidity. These fees are reasonable due to the additional marketable interest (in part attracted by the exchange's rebate to remove liquidity) with which those order flow providers can trade.

Proposed Rule Change

To respond to this competitive environment, the Exchange proposes to streamline its transaction fees and credits by providing a single general rate that would be applicable to all adding liquidity that does not otherwise qualify for a tiered rate and by revising and simplifying the adding and removing liquidity tiers.

The Exchange believes that by increasing the credits available for removing liquidity on the Exchange, more ETP Holders will choose to route liquidity-removing order flow to the Exchange. The Exchange further believes ETP Holders that route orders that provide liquidity will respond to this increased order flow by routing more liquidity-providing order flow to the Exchange. The Exchange further believes that offering a single, slightly higher fee for orders that add liquidity to the Exchange, more ETP Holders will choose to route their liquidity-providing order flow to the Exchange to qualify for one of the adding tiers that, as described below, would have lower fees as compared to the General Rate as the ETP Holder adds more liquidity to the Exchange.

Without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange believes that this combination of revising the quoting and volume requirements and rates available for each of the adding tiers, offering a separate adding tier for non-displayed orders, eliminating current Adding Tier 4 and Step Up Adding Tiers 1 and 2, and revising the requirements and credits available for the removing tiers would be significant enough to incentivize market participants to direct their order flow to the Exchange.

Non-Substantive Changes

The Exchange proposes the following non-substantive changes to reorganize the presentation of the Fee Schedule in order to enhance its clarity and transparency, thereby making the Fee Schedule easier to navigate. Specifically, the Exchange proposes to consolidate all information applicable only to Transaction Fees under Section I of the Fee Schedule.

First, the Exchange would add a new subsection A under Section I titled ''Transaction Fees'' that would set forth the following seven definitions applicable to Transaction Fees:

- ''ADV'' would mean average daily volume;
- ''Adding ADV'' would mean an ETP Holder's average daily volume of shares executed on the Exchange that provided liquidity;
- ''Adding Liquidity'' would mean execution of an ETP Holder's order on the Exchange that provided liquidity;
- ''CADV'' would mean consolidated average daily volume;
- ''Removing Liquidity'' would mean execution of an ETP Holder's Aggressing Order, as defined under Rule 7.36(a)(5), or other orders that removed liquidity;
- ''Removing ADV'' would mean an ETP Holder's average daily volume of shares executed on the Exchange that removed liquidity; and
- ''US CADV'' would mean the United States consolidated average daily volume of transactions reported to a securities information processor (''SIP'').[10] Transactions that are not reported to a SIP are not included in the US CADV.

The Exchange proposes these definitions to use consistent terms throughout Section I of the Fee Schedule relating to Transaction Fees. Specifically, the Exchange proposes to use the term ''Adding'' when referring to an order that when executed, provides liquidity, and to use the term ''Removing'' when referring to an order that when executed, takes liquidity. By consolidating definitions used in Section I of the Fee Schedule, the Exchange would eliminate the need to separately define these terms within the tables of the Fee Schedule or in end notes.

Second, the Exchange proposes to relocate the text in the first four of the five bullets under the heading ''Fees and Credits Applicable to Market Participants,'' which set forth general information applicable to Transaction Fees, to a new subsection B under Section I titled ''General.''[11] In moving this text, the Exchange proposes to add ''of Section I'' before ''of this Schedule of Fees and Rebates'' in the beginning of subsection (c) of the third bullet.[12]

Third, because the Exchange has added two new subsections, the Exchange proposes that current subsection A (''General Rates'') would become new subsection C and current subsection B (''Tiered Rates'') would become new subsection D.

Fourth, the Exchange proposes to add new subsections D.1 titled ''Rates for Adding Liquidity (Per Share)'' and D.2 titled ''Rates for Removing Liquidity (Per Share)'' before the Adding Tiers and Removing Tiers, respectively. The Exchange believes these new subsections will make the Fee Schedule easier to navigate by separating the tiers for adding liquidity from the tiers for removing liquidity.

Fifth, the Exchange proposes to use the term ''rate'' throughout Section I of the Fee Schedule rather than the term ''Fee'' and therefore proposes to replace reference to the term ''fees'' in the D.1 heading with the term ''rates'' so that the second column would become ''Adding Rate''. The Exchange proposes to use the more general term ''Rate'' as it would be applicable both to fees charged and credits provided under the Fee Schedule.

Sixth, the Exchange proposes that in both the Adding Tiers and Removing Tiers, the rates for MPL Orders would be separated into their own columns. The Exchange does not propose any substantive changes to the rates applicable to MPL Orders.

Finally, consistent with the proposal to use consistent terminology described above, under new subsection D.2 (Rates for Removing Liquidity (Per Share)): (1) References to ''taking'' would be replaced with ''removing'' in four places, including the heading of the third column; (2) ''Removing'' would be added before ''Rate'' in the second column; and (3) ''Per share'' would be deleted in six places in the second and third column since the phrase would

[10] The Exchange proposes to refer to the SIP rather than Consolidated Tape because the latter term does not encompass Tape C securities.

[11] The final bullet would remain under the heading ''Fees and Credits Applicable to Market Participants.''

[12] The Exchange also proposes non-substantive grammatical changes to subsections (a) and (c) of the third bullet to use ''must'' or ''will'' rather than ''shall.''

appear in the heading.[13] The Exchange would also correct a typographical error to add a zero to the left of the decimal for the Removing MPL rates.

General Rates

Under the current General Rates, for securities priced at or above $1.00, ETP Holders are charged the following rates for executions that add liquidity to the Exchange, unless a better tiered credit or fee set forth in Fee Schedule applies:

- $0.0023 per share for executions on the Exchange of displayed orders that add liquidity to the Exchange;
- $0.0021 per share for executions on the Exchange of orders that set a new BBO and that add liquidity to the Exchange;
- $0.0025 per share for executions on the Exchange of non-displayed orders that add liquidity to the Exchange; and
- $0.0010 per share for executions on the Exchange of MPL Orders that add liquidity to the Exchange.

For securities priced at or above $1.00, ETP Holders are charged $0.0005 per share for executions that remove liquidity from the Exchange, unless a better tiered credit or fee set forth in Fee Schedule applies.

For securities priced below $1.00, the Exchange does not charge a fee for executions that add or remove liquidity from the Exchange.

The Exchange proposes to streamline and simplify the general rates for adding liquidity in securities priced at or above $1.00. The new general rate for orders that add liquidity would be a single rate of $0.0028 per share, regardless of whether the order was displayed or non-displayed, excluding MPL Orders that add liquidity, which have their own rate. This new general rate would apply unless the ETP Holder is eligible for one of the tiered rates, described below. The separate charges described above for executions on the Exchange of orders that add liquidity and set a new BBO and for executions of non-displayed orders that add liquidity to the Exchange would be eliminated. The current charge for MPL Orders that add liquidity to the Exchange would remain unchanged. Similarly, the current per share charge for executions that remove liquidity to the Exchange would remain unchanged. The Exchange would also continue not to charge a fee for executions that add or remove liquidity from the Exchange for securities priced below $1.00.

With this change, the General Rate available for orders that add liquidity would be a flat $0.0028, rather than the current variable rates of $0.0023, $0.0021 or $0.0025 that change depending on whether the order was displayed or non-displayed or set a new BBO.

The Exchange believes that by offering a single, slightly higher fee for orders that add liquidity to the Exchange, more ETP Holders will choose to route their liquidity-providing order flow to the Exchange to qualify for one of the adding tiers, described below, which would have lower fees as compared to the General Rate as the ETP Holder adds more liquidity to the Exchange.

Adding Tiers

The Exchange currently has six tiers of differentiated pricing for orders that add liquidity on the Exchange. In addition to six different qualifications, within each tier, the rates vary depending on whether the order adds displayed or non-displayed liquidity, sets the BBO, or whether the order is in a Tape A, B, or C Security. These tiers include two ''step up'' Adding Tiers that do not have quoting or minimum volume requirements but require ETP Holders to provide additional incremental liquidity, thus ''stepping up'' their liquidity provision, in order to qualify for better pricing based on smaller amounts of liquidity than are required to qualify for Adding Tiers 1–3.

As described below, the Exchange proposes to reduce the number of adding tiers from six to four and revise and simplify both the qualifications and rates. Adding Tiers 1–3 would be streamlined by (1) simplifying the qualification for each tier to be a percentage of Adding ADV as a percentage of the US CADV, and (2) if the ETP Holder qualifies for the applicable tier, applying a single new rate for displayed liquidity that adds liquidity, regardless of the Tape. The Exchange further proposes to add a separate Adding Tier that would be applicable to orders that provide non-displayed liquidity. Finally, Adding Tier 4, Step Up Tier 1, and Step Up Tier 2 would be eliminated.

Adding Tier 1

Under current Adding Tier 1, ETP Holders that add liquidity to the Exchange in securities with a per share price of $1.00 or more and that:

(i) quote at the NBBO[14] at least 5% of the time in 950 or more securities on an average daily basis, calculated monthly, and have an ADV of adding liquidity as a percentage of US consolidated ADV (''CADV'') of 0.20% or more, or

(ii) quote at the NBBO at least 5% of the time in 2,450 or more securities on an average daily basis, calculated monthly, and have an ADV of adding liquidity as a percentage of US CADV of 0.10% or more, are charged the following fees:

- $0.0008 per share for adding displayed orders in Tape B and C securities and $0.0011 per share in Tape A securities;
- $0.0008 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0011 per share in Tape A securities;
- $0.0010 per share for adding non-displayed orders in Tape B and C securities and $0.0013 per share in Tape A securities; and
- $0.0005 per share for MPL Orders.

The Exchange proposes to replace the current requirements to qualify for Adding Tier 1 with the single requirement that an ETP Holder execute at least 0.15% or more Adding ADV as a percentage of US CADV.

The Exchange also proposes to streamline the Adding Tier 1 fees. A uniform fee of $0.0020 per share for adding displayed orders in Tapes A, B and C securities would replace the current distinct fees of $0.0008 per share for adding displayed orders in Tape B and C securities and $0.0011 per share for adding displayed orders in Tape A securities. The fees for Non-displayed liquidity and BBO setting would be eliminated. The current rate for MPL Orders that add liquidity would not change.

Adding Tier 2

Under current Adding Tier 2, ETP Holders that add liquidity to the Exchange in securities with a per share price of $1.00 or more and that quote at least 5% of the NBBO in 1,950 or more symbols on an average daily basis, calculated monthly, and with an ADV of adding liquidity as a percentage of US CADV of 0.10% or more, are charged the following fees:

- $0.0012 per share for adding displayed orders in Tape B and C securities and $0.0015 per share in Tape A securities;
- $0.0012 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0015 per share in Tape A securities;

[13] ''Per share'' would also be deleted in the heading below new subsection D.1 following ''Adding Rate.''

[14] *See* footnote ** in the current Fee Schedule, which notes that ''NBBO'' (among other terms) is defined in in NYSE National Rule 1.1. As discussed below, the Exchange propose to delete footnote ** in connection with the elimination of qualifications based on the NBBO.

• $0.0014 per share for adding non-displayed orders in Tape B and C securities and $0.0017 per share in Tape A securities; and

• $0.0005 per share for MPL Orders.

The Exchange proposes to replace the current requirement to qualify for Adding Tier 2 with the single requirement that an ETP Holder execute at least 0.10% or more Adding ADV as a percentage of US CADV.

The Exchange also proposes to streamline the Adding Tier 2 fees. A uniform fee of $0.0024 per share for adding displayed orders in Tapes A, B and C securities would replace the current distinct fees of $0.0012 per share for adding displayed orders in Tape B and C securities and $0.0015 per share in Tape A securities. The fees for Non-displayed liquidity and BBO setting would be eliminated. The current rate for MPL Orders that add liquidity would not change.

Adding Tier 3

Under current Adding Tier 3, ETP Holders that add liquidity to the Exchange in securities with a per share price of $1.00 or more and that quote at least 5% of the NBBO in 550 or more symbols on an average daily basis, calculated monthly, are charged the following fees:

• $0.0015 per share for adding displayed orders in Tape B and C securities and $0.0017 per share in Tape A securities;

• $0.0015 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0017 per share in Tape A securities;

• $0.0017 per share for adding non-displayed orders in Tape B and C securities and $0.0019 per share in Tape A securities; and

• $0.0005 per share for MPL Orders.

The Exchange proposes to replace the current requirement to qualify for Adding Tier 3 with the single requirement that an ETP Holder execute at least 0.05% or more Adding ADV as a percentage of US CADV.

The Exchange also proposes to streamline the Adding Tier 3 fees. A uniform fee of $0.0026 per share for adding displayed orders in Tapes A, B and C securities would replace the current distinct fees of $0.0015 per share for adding displayed orders in Tape B and C securities and $0.0017 per share in Tape A securities. The fees for Non-displayed liquidity and BBO setting would be eliminated. The current rate for MPL Orders that add liquidity would remain unchanged.

Deletion of Adding Tier 4 and Step Up Adding Tiers 1 and 2

As noted above, as part of the streamlining of the Exchange's tiered rates, current Adding Tier 4 [15] and Step Up Adding Tiers 1 and 2 would be deleted in their entirety.

Non-Displayed Adding Tier 1

The separate fees for non-displayed liquidity for ETP Holders meeting the requirements of Adding Tiers 1–3 would be deleted and replaced with a new, uniform Non-Displayed Adding Tier 1. To qualify for this tier, the Exchange proposes that an ETP Holder would need at least 0.08% or more of Adding ADV as a percentage of US CADV. If an ETP Holder qualifies for this tier, it would be eligible for a $0.0026 fee for non-displayed orders in all Tapes, excluding MPL Orders that add liquidity. Because, as described above, the rates for MPL Orders would be addressed in Adding Tiers 1–3, the Exchange proposes that the Non-Displayed Adding Tier rate would not be applicable to MPL Orders that add liquidity.

Application of the Proposed Changes to the Adding Tiers

The proposed changes to the Adding Tiers is designed to provide order flow providers with incentives to route liquidity-providing order flow to the Exchange. The proposed rates for these Adding Tiers correlate to the proposed rates for the Removing Tiers, described below. As described above, ETP Holders with liquidity-providing order flow have a choice of where to send that order flow.

For example, if US CADV is 7 billion shares, an ETP Holder would be eligible for the following fees based on their Adding ADV:

• An adding ADV of 5.25 million shares in the billing month would be 0.075% of US CADV. That ETP Holder would qualify for Adding Tier 3 fee of $0.0026 per share for its displayed orders that provide liquidity and the General Rate of $0.0028 for its non-displayed orders that provide liquidity.

• An adding ADV of 8.75 million shares in the billing month would be 0.125% of US CADV. That ETP Holder would qualify for Adding Tier 2 fee of $0.0024 per share for displayed orders that provide liquidity and the Non-Displayed Adding tier fee of $0.0026 per share for non-displayed orders that provide liquidity.

• An adding ADV of 12.25 million shares in the billing month would be 0.175% of US CADV. That ETP Holder would qualify for Adding Tier 1 fee of $0.0020 per share for displayed orders that provide liquidity and the Non-Displayed Adding Tier fee of $0.0026 per share for non-displayed orders that provide liquidity.

• An adding ADV of less than 3.5 million shares in the billing month would be less than 0.05% of US CADV. That ETP Holder would be eligible for the General Rate fee of $0.0028 per share for both displayed and non-displayed orders that provide liquidity.

The Exchange believes that simplifying the requirements to qualify for Adding Tiers 1–3, eliminating three tiers, and establishing a single, higher rate for displayed orders across all three tapes, coupled with a single tier for non-displayed orders with simplified qualification requirements and a higher rate, would make it easier for ETP Holders to qualify for the tiers and would incent ETP Holders to route their liquidity-providing order flow to the Exchange. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of the opportunities presented by the new Adding Tiers. However, based on levels of order flow historically routed to the Exchange, the Exchange believes that as many as four ETP Holders out of 49 ETP Holders on the Exchange could qualify for new Adding Tier 1 if they so choose; two more ETP Holders could qualify for new Adding Tier 2; six more ETP Holders could qualify for new Adding Tier 3; and four ETP Holders could qualify for the new Non-Displayed Adding Tier 1. Additional liquidity-providing order flow benefits all market participants because it provides greater execution opportunities on the Exchange.

Removing Tiers [16]

The Exchange currently sets forth the rebates it provides in three Taking Tiers that establish minimum quoting and volume requirements that an ETP Holder must satisfy in order to be eligible for corresponding rebate, including a separate ''Taking MPL Rate'' setting forth the rebate for ETP Holders using MPL Orders to remove liquidity receive if the quoting and volume requirements are met. As described above, the Exchange proposes to rename the Taking Tiers as ''Removing Tiers.''

The Exchange proposes to revise both the Removing Tier 1 and Removing Tier

[15] Footnote * in the current Fee Schedule provides that the Adding Tier 4 volume requirements are waived. Since the Exchange proposes to delete Adding Tier 4, the Exchange would delete footnote * as well.

[16] As noted, the Exchange proposes to replace ''taking'' with ''removing'' in the Fee Schedule. Current Taking Tiers 1–3 would accordingly become Removing Tiers 1–3.

2 qualification requirements and the credits available under those Tiers, and increase the credit for Removing Tier 3. As noted above, the Exchange believes that simplifying the qualification requirements and increasing the credits for removing liquidity will incent more ETP Holders will choose to route liquidity-removing order flow to the Exchange.

Removing Tier 1

Under current Taking Tier 1, ETP Holders that remove liquidity from the Exchange in securities with a per share price of $1.00 or more and that have at least (1) 0.0025% Adding ADV as a percentage of US CADV, or (2) 0.0125% Adding ADV as a percentage of US CADV and 0.032% Removing ADV as percentage of US CADV, or (3) 0.00125% Adding ADV as a percentage of US CADV and 0.25% Removing ADV as percentage of US CADV, would be eligible for the following credits:

- $0.0020 per share for orders; and
- $0.0002 per share for MPL Orders.

The Exchange proposes to replace the current alternative requirements to qualify for Removing Tier 1 with the requirement that ETP Holders have at least 0.10% Removing ADV as a percentage of US CADV and 250,000 Adding ADV.

The Exchange also proposes to increase the rebate for qualifying for Removing Tier 1 from $0.0020 per share to $0.0030 per share. The current rate for MPL Orders would not change.

Removing Tier 2

Under current Taking Tier 2, ETP Holders that remove liquidity from the Exchange in securities with a per share price of $1.00 or more and that have at least 0.0125% Adding ADV as a percentage of US CADV, would be eligible for the following credits:

- $0.0018 per share for orders; and
- $0.0002 per share for MPL Orders.

The Exchange proposes to replace the current requirement to qualify for Removing Tier 2 with the requirement that ETP Holders have at least 0.04% Removing ADV as a percentage of US CADV and 100,000 Adding ADV.

The Exchange also proposes to increase the rebate for qualifying for Removing Tier 1 from $0.0018 per share to $0.00275 per share. The current rate for MPL Orders would not change.

Removing Tier 3

Under current Taking Tier 3, ETP Holders that remove liquidity from the Exchange in securities with a per share price of $1.00 or more and that have at least 50,000 Adding ADV, would be eligible for the following credits:

- $0.0010 per share for orders; and
- $0.0002 per share for MPL Orders.

The Exchange proposes to increase the rebate for qualifying for Removing Tier 3 from $0.0010 per share to $0.0025 per share. The current rate for MPL Orders would not change.

Application and Impact of the Proposed Changes to the Removing Tiers

The proposed change to the Removing Tiers is designed to provide order flow providers with incentives to route liquidity-removing order flow to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders.

For example, an ETP Holder has an Adding ADV of 75,000 shares. That ETP Holder would qualify for Removing Tier 3 credit of $0.0025 per share.

In a month when US CADV was 7 billion shares, an ETP Holder would be eligible for the following credits:

- A Removing ADV of 3.5 million shares in a billing month would be 0.05% of US CADV. If that ETP Holder also has an Adding ADV of 125,000 shares, the ETP Holder would qualify for Removing Tier 2 credit of $0.00275 per share for orders that remove liquidity by exceeding the requirements.
- A Removing ADV of 8.75 million shares in a billing month would be 0.125% of US CADV. If the ETP Holder also has an Adding ADV of 300,000 shares, that ETP Holder would qualify for Removing Tier 1 credit of $0.0030 per share for orders that remove liquidity by exceeding the requirements.
- An ETP Holder with an Adding ADV of less than 50,000 shares would then be eligible for the base fee of $0.0005 per share for orders that remove liquidity.

As described above, ETP Holders with liquidity-removing order flow have a choice of where to send that order flow. The Exchange believes that by simplifying the requirements to qualify for the two removing tiers with the highest rebate and increasing the rebate for all three removing tiers, more ETP Holders will choose to route their liquidity-removing order flow to the Exchange in order to interact with the increased liquidity-providing order flow the Exchange anticipates from its proposed changes to the Adding Tiers.

The Exchange cannot predict with certainty how many ETP Holders would avail themselves of the opportunities presented by the revised removing tiers. Based on prior order flow routed to the Exchange, the Exchange believes that as many as five ETP Holders of the 49 current Exchange ETP Holders could qualify for the revised Removing Tier 1 if they so choose; six more ETP Holders could qualify for the revised Removing Tier 2; and six more ETP Holders could qualify for the revised Removing Tier 3. Additional liquidity-providing order flow benefits all market participants because it provides greater execution opportunities on the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any one of the registered exchanges or non-exchange trading venues that a firm routes order flow to, which vary month to month, and not all of which are publicly known about. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange.

Given the current competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that offering a single, higher General Rate that would be applicable to all adding liquidity that does not otherwise qualify for a tiered rate is reasonable because a higher rate

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) & (5).

would provide an incentive for ETP Holders to route additional liquidity-providing orders to the Exchange to qualify for one of the Adding Tier rates, thereby promoting price discovery and providing meaningful added levels of liquidity and contributing to the depth and market quality on the Exchange. Similarly, the Exchange believes that revising and simplifying the adding liquidity tier rates and which rates would be available for displayed and non-displayed orders is also reasonable because the Exchange believes that lower tiered rates, coupled with simplified qualification requirements that would make it easier for ETP Holders to qualify for the respective tiers, would incent more ETP Holders to route their liquidity-providing order flow to the Exchange, thereby attracting liquidity-providing order flow to the Exchange.

In addition, the Exchange believes that the proposed changes to the removing tiers are reasonable because the proposed changes would incentivize submission of additional liquidity to a public exchange, thereby enhancing order execution opportunities for ETP Holders. Specifically, simplifying the requirements to qualify for the two removing tiers with the highest rebate and increasing the rebate for all three removing tiers would incentivize ETP Holders to send additional liquidity to the Exchange in order to receive a higher credits and avoid the General Rate fees by meeting the higher liquidity requirements for a Removing Tier credit.

As noted, the Exchange's market share of intraday trading has declined from March 2019 to June 2019. The Exchange believes that the proposal represents a reasonable attempt to encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

Finally, the Exchange also believes the proposed non-substantive changes to consolidate text relating to transaction fees under Section I of the Fee Schedule and to add a definitions section are reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Fee Schedule, thereby reducing potential confusion.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. The proposal would continue to encourage ETP Holders to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The Exchange believes that, for the reasons discussed above, revising and simplifying the qualification requirements for adding and removing tier rates would make it easier for current and new liquidity providers to qualify for the respective tier fees and credits, thereby encouraging submission of additional liquidity to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange further believes that the proposed uniform higher general fee of $0.0028 for adding displayed and non-displayed liquidity is equitable because the magnitude of the uniform rate is not unreasonably higher than the current separate fees for displayed ($0.0023) and non-displayed ($0.0025) adding liquidity that it would replace, and in comparison to the general rates charged by other exchanges with taker-maker fee models for adding liquidity. For example, Cboe EDGA charges a non-tier fee of $0.0030 per share for adding liquidity.[19]

The proposed higher fees for adding displayed liquidity in Tape A, Tape B and Tape C securities in Adding Tier 1 ($0.0020), Adding Tier 2 ($0.0024) and Adding Tier 3 ($0.0026) and the single, higher Non-Displayed Adding Tier 1 charge are equitable because the magnitude of the uniform rates is not unreasonably higher than the current separate rates each replaces, and in comparison to the fees charged by other exchanges for orders that add displayed and non-displayed liquidity. For example, Cboe EDGA charges a tiered fees of $0.0022 and $0.0026 for adding liquidity.[20]

Finally, the higher proposed credits for Removing Tier 1 ($0.0030), Removing Tier 2 ($0.00275), and Removing Tier 3 ($0.0025) are similarly equitable because the magnitude of the uniform rates is not unreasonably higher than the current separate rates each replaces, and in comparison to the fees charged by other exchanges for orders that add displayed and non-displayed liquidity. For example, Cboe EDGA offers a tiered credit of ($0.0026) per share for removing liquidity.[21]

The number of ETP Holders that could qualify for the General Rate, each of the Adding Tiers, and the Removing Tiers are noted above. Without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange believes the proposed revised requirements and corresponding higher rates would provide an incentive for market participants to increase the orders they send to the Exchange in order to meet the new lower requirement and submit additional adding liquidity to the Exchange. In addition, based on the profile of liquidity-providing firms generally, the Exchange believes that numerous firms could qualify for the Adding Tiers Removing Tiers if they choose to direct order flow to, as noted earlier, and increase trading on, the Exchange.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality and price discovery. The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rates and would be eligible for the same fees and credits. Moreover, the proposed change is equitable because all qualifying ETP Holders that meet the new requirements for Adding Tiers 1–3 would be eligible for the fee by satisfying the revised requirements, and because the revised requirements would apply equally to all similarly situated ETP Holders. Similarly, the proposed change is equitable because all qualifying ETP Holders that meet the new requirements for Removing Tiers 1–3 would be eligible for the credits by satisfying the revised requirements, and because the revised requirements would apply equally to all similarly situated ETP Holders.

[19] *See* Cboe EDGA U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edga/*.

[20] *See id.*

[21] *See id.*

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and other market participants would be charged the same rates or receive the same credits.

The Exchange further believes that the proposal does not permit unfair discrimination because the Exchange will be making the Adding Tier and Removing Tier rates available to all ETP Holders on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. For the same reasons, the Exchange believes that the proposal would not permit unfair discrimination among ETP Holders. The Exchange believes that the proposed change is not unfairly discriminatory because all qualifying ETP Holders that meet the revised requirements would be eligible for the Adding Tiers 1–3 fees by satisfying the revised thresholds, and because the revised thresholds would apply equally to all similarly situated ETP Holders. Similarly, the proposed change is equitable because all qualifying ETP Holders that meet the new requirements for Removing Tiers 1–3 would be eligible for the credits by satisfying the revised requirements, and because the revised requirements would apply equally to all similarly situated ETP Holders.

The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[22] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [23]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed increased fees and credits would continue to incentivize market participants to direct liquidity providing and removing orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed reduced requirements for the tiers would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) declined from March to June 2019. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [24] of the Act and subparagraph (f)(2) of Rule 19b–4 [25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[22] 15 U.S.C. 78f(b)(8).

[23] Regulation NMS, 70 FR at 37498–99.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

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–NYSENAT–2019–18 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–NYSENAT–2019–18. 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 offices 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–NYSENAT–2019–18, and should be submitted on or before September 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17484 Filed 8–14–19; 8:45 am]

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86619; File No. SR–IEX–2019–05]

Self-Regulatory Organizations; Investors Exchange LLC; Order Granting Approval of a Proposed Rule Change to Establish a Retail Price Improvement Program

August 9, 2019.

I. Introduction

On June 20, 2019, Investors Exchange LLC (''IEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Price Improvement Program (''Retail Program'') on the Exchange. The proposed rule change was published for comment in the **Federal Register** on July 5, 2019.[3] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

IEX proposes to adopt Exchange Rule 11.232 to establish the Retail Program, which the Exchange intends will incentivize IEX Members to add midpoint liquidity to the Exchange to provide additional opportunities for retail investors to obtain price improvement.

Specifically, under the Retail Program, IEX Members could apply to become a Retail Member Organization (''RMO''), which designation would permit them to submit certain agency or riskless principal orders that reflect trading interest of a natural person and that are designated with a ''Retail Order'' modifier. Any IEX Member will be able to submit a new liquidity-providing order type, a Retail Liquidity Provider (''RLP'') order, that would only be eligible to execute against an incoming ''Retail Order'' from a RMO, generally at the midpoint price of the National Best Bid and National Best Offer (''Midpoint Price'').

A. New Definitions

In connection with the Retail Program, the Exchange proposes three new defined terms. First, under existing Exchange Rule 11.190 (Orders and Modifiers), the term ''Retail Order'' would be defined as an agency order, or a riskless principal order that satisfies the criteria of FINRA Rule 5320.03, submitted by a Retail Member Organization, that is designated with a ''Retail Order'' modifier and reflects trading interest of a natural person, with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market, and that does not originate from a trading algorithm or any other computerized methodology. Retail Orders could either be Discretionary Peg or Midpoint Peg orders[4] with a time-in-force of Immediate-or-Cancel (''IOC'') or Fill-or-Kill (''FOK''). Second, IEX proposes to amend Rule 11.190 to add the defined term ''Retail Liquidity Provider order,'' which would be defined as a Discretionary Peg order that is only eligible to execute against incoming Retail Orders through the execution process described in proposed new IEX Rule 11.232(e). Finally, under proposed IEX Rule 11.232(a), IEX would define the term ''Retail Member Organization'' as an IEX Member (or division thereof) that has been approved by the Exchange to submit Retail Orders.

B. Retail Member Organizations

Under proposed Rule 11.232(b), any IEX Member (or a division thereof) could qualify as an RMO if it conducts a retail business or handles retail orders on behalf of another broker-dealer. An IEX Member would be required to submit: (1) An application form; (2) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow, such as sample marketing literature, website screenshots, or other publicly disclosed material describing the Member's retail order flow; and (3) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders would meet the qualifications under the Retail Program.

If approved as a RMO, the IEX Member would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the IEX Member to: (i) Exercise due diligence before entering a Retail Order to assure

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86241 (June 28, 2019), 84 FR 32238 (''Notice'').

[4] Both Discretionary Peg and Midpoint Peg orders are non-displayed trading interest on the Exchange. *See* IEX Rule 11.190(a)(9) and (10).

that entry as a Retail Order is in compliance with the requirements the Retail Program; and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements under the Retail Program. If a RMO does not itself conduct a retail business—but routes Retail Orders on behalf of another broker-dealer—the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. Additionally, the RMO must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the RMO orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of the Retail Program; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements of the Retail Program.[5] The Exchange also proposes rules setting forth procedures for addressing a RMO's failure to comply with the Retail Program requirements.[6]

C. Priority and Allocation

Proposed IEX Rule 11.232(e) sets forth the rules governing priority and order allocation for the Retail Program. Specifically, Retail Liquidity Provider orders in the same security would be ranked and allocated according first to price and then to time of entry into the IEX System. Upon entry into the IEX System, a Retail Order would seek to execute against resting contra-side orders in price/time priority in accordance with current IEX Rule 11.230 (Order Execution) and also subject to the following provisions set forth in new IEX Rule 11.232(e):

- A Retail Order to buy (sell) will execute upon entry against sell (buy) orders resting on the IEX Order Book in the following order:

1. displayed sell (buy) orders at the National Best Offer (National Best Bid) during a locked or crossed market;

2. non-displayed orders priced to trade at the Midpoint Price; followed by

3. Retail Liquidity Provider orders priced to trade at the Midpoint Price.[7] Thus, RLP orders would have last priority when interacting with an incoming Retail Order. As noted earlier, Retail Orders are either IOC or FOK. Therefore, any Retail Orders not executed pursuant to the above execution priority would be cancelled.

D. Conforming Changes

Finally, the Exchange proposed to delete current IEX Rule 11.340(d)(4), which, in relevant part, states that the Exchange does not operate a retail liquidity program.[8]

E. Comparison to Other Retail Programs

In the Notice,[9] the Exchange discusses how its Retail Program compares to, among others, the retail programs of the New York Stock Exchange (''NYSE'') and Nasdaq BX (''BX''), which the Commission recently approved to become permanent during the pilot periods for each respective program.[10] IEX highlights the substantive differences between several features of its program and the programs of other exchanges.[11] Among other things, for example, the Exchange explains that the price improvement offered by its Retail Program would be a Midpoint Price execution instead of a minimum $0.001 above the NBBO or exchange best bid and offer. IEX also notes that any of its Members would be eligible to submit an RLP order, whereas use of a similar order type on NYSE is restricted, and that RLP orders on IEX would not have higher execution priority over non-RLP orders.[12]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to establish the Retail Program is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5)[14] and 6(b)(8)[15] of the Exchange Act. Section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Exchange Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Under IEX's proposed Retail Program, IEX will operate a process by which Members could qualify to become RMOs, thereby permissioning them to submit certain liquidity-taking Retail Orders to IEX for execution, generally, at the Midpoint Price. Any Member could submit liquidity-providing RLP orders, which will be Discretionary Peg orders that are only eligible to execute against the designated Retail Orders. Retail Orders would be able to execute against the proposed RLP orders as well as certain other orders on the Exchange's order book as specified in proposed IEX Rule 1.232(e).

The Commission notes that the Exchange's proposed Retail Program is substantively different in several respects than the retail liquidity programs operated by certain other national securities exchanges and, thus, does not present all of the same issues raised by those programs. The Commission notes that IEX provided a fulsome discussion of the distinctions between its proposed Retail Program and the programs operated by other exchanges. In particular, IEX described its proposed Retail Program as ''leverage[ing] IEX's existing market structure'' and discussed how IEX will: (1) Allow executions at Midpoint Prices instead of any subpenny price; (2) not disseminate when an RLP order is on the book, which could serve as an incentive to only route Retail Orders to IEX when the presence of an RLP order is disseminated; (3) have no impact on order book priority and give RLP orders

[5] The Exchange represents that FINRA, on behalf of the Exchange, will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls. *See id.,* at 32239 n.17.

[6] New IEX Rules 11.232(b), (c), and (d) would set forth the procedures governing the Exchange's review of an RMO application, how the Exchange would reject an RMO application or disqualify a Member that has already been approved as an RMO, and how a Member could appeal a rejected RMO application or disqualification. *See* Notice, *supra* note 3, at 32239–40.

[7] In the Notice, the Exchange provides examples illustrating how these priority rules would operate. *See id.,* at 32240.

[8] IEX Rule 11.340 governs the Tick Size Pilot Plan and currently is not in effect due to the expiration of the Tick Size Pilot.

[9] *See id.,* at 32240–42.

[10] *See* Securities Exchange Act Release Nos. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR–NYSE–2018–28) (approving NYSE Retail Liquidity Program on a permanent basis); 86194 (June 25, 2019), 84 FR 31385 (July 1, 2019) (SR–BX–2019–011) (approving Nasdaq BX Retail Price Improvement Program on a permanent basis). The Commission notes that at the time that this proposed rule change was filed, the Nasdaq BX Retail Price Improvement Program had not yet been approved on a permanent basis.

[11] *See* Notice, supra note 3, at 32240–42.

[12] *See id.,* at 32240.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(8).

lower priority than other liquidity providing orders priced to trade at the midpoint; and (4) operate within existing tick size trading increments.[16]

The proposal includes qualification and application rules for RMOs, an appeal process for disapproved RMOs, requirements for RMOs to include written policies and procedures to ensure that Retail Orders are bona fide, required annual attestations from RMOs with respect to Retail Orders, and a process for disqualification of RMOs with appeal procedures. The Commission believes that the proposal with respect to RMOs is consistent with the Exchange Act as it is reasonably designed to ensure that RMOs submit only bona fide Retail Orders to the program and, thus, helps ensure that the program is operated in the interests of investor protection and consistent with the public interest. All IEX Members would have an opportunity to become a RMO if desired, and the Commission believes that the proposal sets forth a fair and reasonable process to become and remain a RMO.

The Exchange asserts that while the Retail Program would differentiate among its Members, it believes that such differentiation is not unfairly discriminatory because the Retail Program is designed to promote a competitive process for retail executions on a registered exchange while providing retail investors with the potential to receive meaningful price improvement.[17] The Exchange notes that, under the respective retail programs of NYSE, BX, and others, there is existing precedent for differentiation and limited segmentation of incoming retail order flow and liquidity providing order flow that seeks to execute against such incoming retail flow.[18] IEX also asserts that, as with the NYSE and BX programs, its Retail Program is designed to provide an additional competitive alternative for retail orders by offering certain incentives for broker-dealers to bring more of their retail order flow onto a public exchange.[19]

The Commission believes that proposals involving segmentation of order flow on a national securities exchange—even if such order flow is retail or offers price improvement to retail orders– must be carefully evaluated. In this instance, the Commission believes that the Retail Program is reasonably designed, within the Exchange's existing market structure, to attract retail order flow to a registered national securities exchange, while offering the opportunity for retail investors to potentially benefit from midpoint executions.[20]

The Commission also believes that providing RLP orders lower execution priority against Retail orders than other orders priced to trade at the Midpoint Price is not designed to permit unfair discrimination or impose an unnecessary or inappropriate burden on competition. The Commission notes that the RLP order type would be available to all IEX Members, and Members seeking to interact with retail order flow on IEX also would be able to submit non-RLP orders for Midpoint Price executions, which would be given higher priority than RLP orders. Given the restrictions on RLP orders (*i.e.,* they would only interact with incoming Retail Orders), it is appropriate that RLP orders would not impact order book priority and not enjoy a competitive advantage, in the form of enhanced priority or execution opportunities, over other resting orders, but rather would yield priority to them. Further, IEX will allow any Member to submit RLP orders, which provides fair and broad access to this new order type and should promote competition by removing barriers to its use on the Exchange.

Further, the Exchange explains that requiring a Retail Order to be either a Discretionary Peg order or Midpoint Peg order with a time-in-force of IOC or FOK is designed to maximize the opportunity for such orders to be executed on IEX with Midpoint Price improvement.[21] This approach provides for potentially meaningful price improvement while utilizing order types that operate within the current minimum trading increment rules. To the extent it is successful, the proposal could facilitate and promote competition between exchanges and the over-the-counter market and potentially bring more retail order flow to a public exchange. As such, the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and further the investor protection and public interest objectives of Section 6(b) of the Act.

Accordingly, the Commission finds the design of the Retail Program within the current market structure to be consistent with the Act, including the requirements of Section 6(b)(5) and Section 6(b)(8) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[22] that the proposed rule change (SR–IEX–2019–05), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

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[16] *See* Notice, *supra* note 3, at 32241.

[17] *See* Notice, *supra* note 3, at 32242.

[18] *See supra* notes 9–12 and accompanying text.

[19] *See* Notice, *supra* note 3, at 32242.

[20] The Commission has previously recognized that market participants and some exchanges distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed about short term price movements. The Commission has also recognized that, because of this distinction, some liquidity providers may be more inclined to offer price improvement to retail orders. *See* Securities Exchange Act Release Nos. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR–BX–2014–048) (approving the BX Retail Price Improvement Program on a pilot basis).

[21] *See* Notice, *supra* note 3, at 32243.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86623; File No. SR–CboeBZX–2019–073]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 14.3(e), Additional Requirements for Securities Issued by the Exchange or Its Affiliates

August 9, 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 August 6, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make three changes to Rule 14.3(e), Additional Requirements for Securities Issued by the Exchange or its Affiliates.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 14.3(e) (Additional Requirements for Securities Issued by the Exchange or its Affiliates) regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates.

Rule 14.3(e) sets forth certain monitoring requirements that must be met throughout the continued listing and trading of securities issued by the Exchange or its affiliates. More specifically, Rule 14.3(e)(2) and (3) provide that:

- Throughout the continued listing and trading of an Affiliate Security [5] on the Exchange, the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee (''ROC'') of the Exchange's Board of Directors that describes the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards (the ''Quarterly Listing Report'');
- once a year, an independent accounting firm shall review the listing standards for the Affiliate Security to ensure that the issuer is in compliance with the listing requirements (''Annual Report''), and a copy of the Annual Report shall be forwarded promptly to the ROC; and
- throughout the trading of an Affiliate Security on the Exchange, the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules (the ''Quarterly Trading Report'' and, collectively with the Quarterly Listing Report, the ''Quarterly Reports'').

Rule 14.3(e)(4) requires that a copy of all Quarterly Reports and Annual Reports will be forwarded promptly to the Commission.

The Exchange proposes to amend Rule 14.3(e)(4) to remove the requirement that copies of the Quarterly Reports and Annual Reports be forwarded to the Commission and instead providing that the Exchange will forward a copy of the Quarterly Reports and/or Annual Reports to the Commission upon request.

Finally, the Exchange is proposing to make clear that the requirements under Rule 14.3(e)(2)(A),[6] (B),[7] (C),[8] and (D) [9] do not apply to Affiliate Securities that are Exchange-listed options. The Exchange is proposing this change because there is no issuer for options as the term is used in Rule 14.3(e)(2) and each of the requirements under Rule 14.3(e)(2) are implicitly related to equity securities and not to options on such equity securities. The Exchange is not proposing to make any changes to the requirement for all Affiliate Securities (including options) under Rule 14.3(e)(3) that ''throughout the trading of an Affiliate Security on the Exchange, the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading

[5] As defined in Rule 14.3(e)(1)(B), the term ''Affiliate Security'' means any security issued by a BZX Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depository Receipts as defined in Rule 14.11(b) and Index Fund Shares as defined in Rule 14.11(c).

[6] Rule 14.3(e)(2)(A) requires that prior to the initial listing of an Affiliate Security on the Exchange, Exchange personnel shall determine that such security satisfies the Exchange's rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange's Board of Directors.

[7] Rule 14.3(e)(2)(B) requires that throughout the continued listing of an Affiliate Security on the Exchange, the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards, including: the Affiliate Security's compliance with the Exchange's minimum share price requirement; and the Affiliate Security's compliance with each of the quantitative continued listing requirements.

[8] Rule 14.3(e)(2)(C) requires that once a year, an independent accounting firm shall review the listing standards for the Affiliate Security to ensure that the issuer is in compliance with the listing requirements and a copy of the report shall be forwarded promptly to the Regulatory Oversight Committee of the Exchange's Board of Directors.

[9] Rule 14.3(e)(2)(D) requires that in the event that the Exchange determines that the BZX Affiliate is not in compliance with any of the Exchange's listing standards, the Exchange shall notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange shall file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The report shall identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange shall notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any.

rules.'' As such, the Exchange will continue to prepare reports on all Affiliate Securities (including those that are Exchange-listed options) as required under Rule 14.3(e)(3).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [10] in general and Section 6(b)(5) of the Act [11] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, because the proposed changes would reduce the paperwork received by the Commission and ease the burden of submitting the Quarterly Reports and Annual Reports, without changing the information available to the Commission. In discussions with the Commission Staff regarding Rule 14.3(e), it was determined that the Exchange no longer needed to provide copies of the Quarterly Reports and Annual Reports to the Commission. The Quarterly Reports and Annual Reports would continue to be available to the Commission, as they are subject to Section 17A of the Act [12] and Rule 17a–1 thereunder,[13] pursuant to which the Exchange is required to keep and preserve copies of the Quarterly Reports and Annual Reports, and to promptly furnish to the Commission copies of such Reports upon request of any representative of the Commission.

Finally, the Exchange believes that the clarifying change to exclude options on Affiliate Securities from the requirements of Rule 14.3(e)(2) would promote just and equitable principles of trade and remove impediments to a free and open market by making clear that certain obligations that implicitly did not apply to options on Affiliate Securities do not, in fact, apply. As noted above, the Exchange will continue to prepare reports on all Affiliate Securities that include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules (including those that are Exchange-listed options) as required under Rule 14.3(e)(3).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes to eliminate the requirement that the Exchange submit copies of the Quarterly Reports and Annual Reports to the Commission and excluding options on Affiliate Securities from the requirements of Rule 14.3(e)(2) will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2019–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–073. 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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78q.

[13] 17 CFR 240.17a–1.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

submissions should refer to File Number SR–CboeBZX–2019–073 and should be submitted on or before September 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17486 Filed 8–14–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86624; File No. SR–BX–2019–028]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct an Inadvertent Error in a Recent Filing and Amend the BX Options Rules at Chapter 1, Section 1 Definitions

August 9, 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 July 30, 2019, Nasdaq BX, Inc. (''BX'' 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 a proposal to correct an inadvertent error in a recent filing and amend the BX Options Rules (''BX Options'') at Chapter 1, Section 1 Definitions.[3]

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.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 Exchange proposes to correct an inadvertent error to a recent filing.[4] The filing it is correcting was designed to align BX Options Rules with those of the Nasdaq ISE, LLC rulebook. The Exchange added several definitions to Section1 of Chapter I, but did not delete the legacy definitions located in Sections 1(a)(16), (58), and (65). The legacy definitions are being deleted because they are already covered in Sections 1(a)(73)–(75). The proposed change is of a non-substantive nature and will simply delete the legacy definitions to avoid potential confusion.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that by removing the legacy definitions for the terms ''class of options'', ''series of options'', and ''underlying security'' from the BX Options rulebook will help 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 through lessening potential confusion and adding clarity for market participants.

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 proposed rule changes is to correct an inadvertent error and intended to lessen potential confusion with the Exchange's Rulebook, and therefore does not unduly burden competition.

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[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[10] 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 removes only outdated definitions, 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.[11]

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

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86221 (June 27, 2019), 84 FR 31937 (July 3, 2019) (SR–BX–2019–023).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 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).

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–BX–2019–028 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–BX–2019–028. 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–BX–2019–028, and should be submitted on or before September 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17489 Filed 8–14–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86625; File No. SR–NASDAQ–2019–063]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct an Inadvertent Error in a Recent Filing and Amend the NOM Rules at Chapter 1, Section 1 Definitions

August 9, 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 August 2, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' 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 correct an inadvertent error in a recent filing and amend The Nasdaq Options Market LLC (''NOM'') Rules at Chapter 1, Section 1 Definitions.[3]

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.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 Exchange proposes to correct an inadvertent error to a recent filing.[4] The filing it is correcting was designed to align the NOM Rules with those of the Nasdaq ISE, LLC rulebook. The Exchange added several definitions to Section 1 of Chapter I, but did not delete the legacy definitions located in Sections 1(a)(7), (57), and (64) . The legacy definitions are being deleted because they are already covered in Sections 1(a)(72)–(74). The proposed change is of a non-substantive nature and will simply delete the legacy definitions to avoid potential confusion.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that by removing the legacy definitions for the terms ''class of options'', ''series of options'', and ''underlying security'' from the NOM rulebook will help 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 through lessening potential confusion and adding clarity for market participants.

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 proposed rule changes is to correct an

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86022 (June 4, 2019), 84 FR 26912 (June 10, 2019) (SR–NASDAQ–2019–047).

[4] *Supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

inadvertent error and intended to lessen potential confusion with the Exchange's Rulebook, and therefore does not unduly burden competition.

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 [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] 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 removes only outdated definitions, 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.[11]

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–NASDAQ–2019–063 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–NASDAQ–2019–063. 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–NASDAQ–2019–063, and should be submitted on or before September 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17485 Filed 8–14–19; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 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).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86617; File No. SR–CBOE–2019–043]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Ability To Submit Frequent Trader Forms

August 9, 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 August 7, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend the ability to submit Frequent Trader Forms. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule with respect to its Frequent Trader Program. By way of background, through the Frequent Trader Program, the Exchange offers transaction fee rebates to Customers and Professional Customers and Voluntary Professionals (origin codes ''C'' and ''W'', respectively) (collectively ''Customers'') that meet certain volume thresholds in VIX, SPX (including SPXW) and RUT options, provided the Customer registers for the program (the ''Frequent Trader Program'' or ''Program''). Once registered, the Customer is provided a unique identification number (''FTID'') that can be affixed to each of its orders. The FTID allows the Exchange to identify and aggregate all electronic and manual trades during both the Regular Trading Hours and Global Trading Hours sessions from that Customer for purposes of determining whether the Customer meets any of the various volume thresholds. The Customer has to provide its FTID to the Trading Permit Holder (''TPH'') submitting that Customer's order to the Exchange (''executing agent'' or ''executing TPH'') and that executing TPH would have to enter the Customer's FTID on each of that Customer's orders.[5]

The Exchange notes that there are instances however, in which a Customer's FTID was not or could not be, affixed to an order. For example, an executing TPH may receive an order with multiple contra parties, including parties that are also customers with their own unique FTIDs. The executing TPH's front end system however, may only allow it to input only one FTID on the order. Thus the other Customers to the trade would not have their FTID represented at the time of submission. Additionally, it is possible that an executing TPH inadvertently enters an incorrect FTID number on an order. Accordingly, the Exchange adopted a rule to provide executing TPHs the ability to submit to the exchange a form (the ''Frequent Trader Program—Volume Corrections Form'' or ''Form'') that would provide a mechanism for executing TPHs to identify transactions to the Exchange that should have been, but were not, associated with particular FTIDs. More specifically, the executing TPH would identify on the form the ''correct'' FTID that should be associated with a specific transaction, so that such volume is properly counted towards the appropriate Customer's aggregated volume for purposes of determining what tier, if any, the customer meets. Currently, the Frequent Trader Program—Volume Corrections Form (''FT Form'') has to be submitted to the Exchange within 3 business days.[6] The Exchange now proposes to modify the means in which TPHs submit the information required on the FT Form and shorten the submission deadline. Specifically, the Exchange proposes that instead of using the current FT Form, all TPHs must submit FTID information electronically to the Exchange in a form and manner prescribed by the Exchange.[7] Such electronic submission must be received no later than 6:00 p.m. CT on the trade date. In order to provide some flexibility in the event of extenuating circumstances (such as a system issue), the Exchange additionally proposes to provide that, in extenuating circumstances as determined by the Exchange, the deadline may be extended until 6:00 p.m. CT on the business day following the trade date. The Exchange believes that it is no longer necessary to provide TPHs 3 days to submit the current form. Particularly, the Exchange believes that TPHs shouldn't need more than the trade date to submit FTID information electronically as it is not an overly burdensome process. The Exchange also notes that the Frequent Trader Program was established over three years ago and TPHs therefore should be familiar with the program and its requirements and more proficient in ensuring FTID information is submitted in a timely manner. Indeed, absent unusual circumstances, the Exchange believes all TPHs should be able to meet the modified deadline. The proposed rule change would streamline the process and result in the FTID information being submitted in a timelier manner.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange notes that eliminating the 3 day submission period for FTID information to be submitted helps ensure that a Customer's real trading volume is more immediately and accurately represented, which helps streamline the administration of the Program. The Exchange believes that all TPHs should be able to prepare and submit such FTID information electronically to the Exchange on the trade date. The proposed change also ensures timely processing and finality. The establishment of this process will also make it easier for the Exchange to administer the Frequent Trader Program. Additionally, it has been approximately 3 years since the original FT Form was adopted and as such, TPHs should be familiar with the

[5] The Exchange notes that it is the responsibility of the Customer to request that the executing TPH affix its FTID to its order(s), and that it is voluntary for the executing TPH to do so.

[6] *See* Securities Exchange Act Release No. 77659 (April 20, 2016), 81 FR 24678 (April 26, 2016) (SR–CBOE–2016–037)

[7] The Exchange has issued an Exchange Trade Notice providing the details as to how TPHs may submit such information to the Exchange and any corresponding deadline. *See* Cboe Options Trade Notice, ''Frequent Trader ID Additions and Corrections—Change in Procedures'', Reference ID C2019060700, which sets forth the file format, information required and corresponding deadlines. To the extent the Exchange amends the process or deadline in the future, the Exchange will similarly issue Exchange a new Trade Notice describing the changes.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

Frequent Trader Program and should have systems and procedures in place to process to provide the required FTID information on the trade date. The Exchange also notes that the ability to provide FTID information electronically to the Exchange post-trade is merely an additional means to ensure FTPID information is relayed to the Exchange. TPHs still have the option of affixing FTIDs on the orders or may add or modify FTID information on post-trade records on the trade date via Cboe Trade Match (''CTM'') terminals. As such, the Exchange believes notwithstanding the proposed changes, that TPHs still are provided a variety of means to ensure FTID information is relayed to the Exchange in a timely, efficient manner, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies uniformly to all executing TPHs of Customer FTID orders and because it still provides for an alternative means for which a Customer's FTID that was not applied to that Customer's order at the time of entry is still submitted to the Exchange to be counted towards the Frequent Trader Program thresholds. The Exchange believes that the proposed rule change will not cause an unnecessary burden on intermarket competition because it only applies to trading on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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 [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that in June 2019, TPHs received prior notice of the proposed change and proposed implementation date for the beginning of August.[15] The proposal converts the paper-based process through which TPHs submit information required pursuant to the optional frequent trader fee incentive program and instead requires TPHs to submit that information electronically. Given the ministerial nature of this change, 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.[16]

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–CBOE–2019–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–043 and should be submitted on or before September 5, 2019.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Cboe Options Trade Notice, ''Frequent Trader ID Additions and Corrections—Change in Procedures'', Reference ID C2019060700.

[16] 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).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17492 Filed 8–14–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86621; File No. SR–CboeEDGX–2019–047]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rule 21.21 (Solicitation Auction Mechanism)

August 9, 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 July 31, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 the Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to adopt Rule 21.21. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (''Cboe Global''), which is the parent company of Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc. (''C2''), acquired the Exchange, Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BZX Exchange, Inc. (''BZX or BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with C2, Cboe Options, the Exchange, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its technology to the same trading platform used by the Exchange, C2, and BZX Options in the fourth quarter of 2019. The proposal set forth below is intended to add certain functionality to the Exchange's System that is available on Cboe Options in order to ultimately provide a consistent technology offering for market participants who interact with the Cboe Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The purpose of the proposed rule change is to adopt the Solicitation Auction Mechanism (''SAM''), which is a solicited order mechanism for larger-sized orders. SAM will provide an additional method for market participants to effect orders in a price improvement auction. The proposed rule change is similar to the solicited order mechanism of Cboe Options and other options exchanges. Many aspects of the proposed rule change are similar to the corresponding aspects of the Automated Improvement Mechanism (''AIM''), which is the Exchange's current electronic crossing mechanism. The Exchange believes the similarity of SAM to the Exchange's AIM mechanism and the mechanisms of other exchanges will allow the Exchange's proposed price improvement functionality to fit seamlessly into the options market and benefit market participants who are already familiar with this similar functionality. The Exchange also believes this will encourage Users to compete vigorously to provide the opportunity for price improvement for larger-sized customer orders in a competitive auction process.

An Options Member (the ''Initiating Member'') may electronically submit for execution an order it represents as agent (''Agency Order'') against a solicited order(s)[3] if it submits the Agency Order for electronic execution into a SAM Auction pursuant to proposed Rule 21.21.[4]

The Initiating Member may initiate a SAM Auction if all of the following conditions are met:

- The Agency Order may be in any class traded on the Exchange.[5]
- The Initiating Member must mark an Agency Order for SAM Auction processing.[6]
- The Agency Order must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts). The Solicited Order must be for (or must total, if the Solicited Order is comprised of multiple solicited orders)[7] the same size as the Agency Order. The Initiating Member must designate each of the Agency Order and Solicited Order as all-or-none (''AON'').[8]
- The price of the Agency Order and Solicited Order must be in an increment of $0.01.[9]

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The solicited order(s) cannot be for the same EFID as the Agency Order or for the account of any Options Market Maker with an appointment in the applicable class on the Exchange. Cboe Options Rule 6.74B is silent on how it determines whether both orders submitted to a SAM Auction are solicited for different accounts. The Agency Order and Solicited Order cannot both be for the accounts of a customer. Cboe Options Rule 6.74B does not contain a similar prohibition. The Exchange believes it is appropriate for such customer-to-customer crosses to be submitted to an AIM Auction pursuant to Rule 6.74A [sic], as that rule contains a provision for Customer-to-Customer Immediate AIM Crosses.

[4] For purposes of proposed Rule 21.21, the term ''NBBO'' means the national best bid or national best offer at the particular point in time applicable to the reference, and the term ''Initial NBBO'' means the national best bid or national best offer at the time a SAM Auction is initiated.

[5] *See* proposed Rule 21.21(a)(1). Cboe Options Rule 6.74B(a)(1) permits Cboe Options to make SAM available on a class-by-class basis. The Exchange does not believe it currently needs this flexibility.

[6] *See* proposed Rule 21.21(a)(2); *see also* Cboe Options Rule 6.74B(b)(1)(A).

[7] Cboe Options Rule 6.74B does not permit the solicited order to consist of multiple contras. See additional discussion below regarding the provision to permit multiple contra-parties to be solicited to trade against an Agency Order.

[8] *See* proposed Rule 21.21(a)(3); *see also* Cboe Options Rule 6.74B(a)(1) and (2).

[9] *See* proposed Rule 21.21(a)(4). Cboe Options Rule 6.74B(a)(3) permits Cboe Options to determine

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• An Initiating Member may not designate an Agency Order or Solicited Order as Post Only.[10]

• An Initiating Member may only submit an Agency Order to a SAM Auction after the market open.[11]

• An Initiating Member may not submit an Agency Order if the NBBO is crossed (unless the Agency Order is a SAM ISO).[12]

The System rejects or cancels both an Agency Order and Solicited Order submitted to a SAM Auction that do not meet these conditions.[13]

As defined, the Solicited Order may be comprised of multiple solicited orders, in which case they must total the same size as the Agency Order (and thus be for a total of at least 500 contracts). This will accommodate multiple contra-parties and increase the opportunities for customer orders to be submitted into a SAM Auction with the potential for price improvement, since the Initiating Order must stop the full size of the Agency Order. This will have no impact on the execution of the Agency Order, which may trade against multiple contra-parties depending on the final auction price, as set forth in proposed paragraph (e). The Exchange notes that with regard to order entry, the first order submitted into the system is marked as the initiating/agency side and the second order is marked as the contra-side. Additionally, the Solicited Order will always be entered as a single order, even if that order consists of multiple contra-parties who are allocated their portion of the trade in a post-trade allocation.[14]

The Solicited Order must stop the entire Agency Order at a price that satisfies the following conditions:

• The stop price for a buy (sell) Agency Order must be at or better than the then-current NBO (NBB).[15]

• If the Agency Order is to buy (sell), the stop price must be at least $0.01 better than the Exchange best bid (offer), unless the Agency Order is a Priority Customer order and the resting order is a non-Priority Customer order, in which case the stop price must be at or better than the Exchange best bid (offer).[16] The Exchange believes this condition protects orders on the same side as the Agency Order resting on the EDGX Options Book, including Priority Customer orders. By permitting a Priority Customer Agency Order to be entered at the same price as a resting non-Priority Customer order, the proposed rule change also protects Priority Customer orders submitted into an AIM [sic] Auction. The proposed rule change is consistent with general customer priority principles.

• If the Agency Order is to buy (sell) and the Exchange best offer (bid) represents (a) a Priority Customer order on the EDGX Options Book, the stop price must be at least $0.01 better than the Exchange best offer (bid); or (b) a quote or order that is not a Priority Customer order on the EDGX Options Book, the stop price must be at or better than the Exchange best offer (bid).[17] The Exchange believes this condition protects orders on the opposite side of the Agency Order resting on the EDGX Options Book, including Priority Customer orders.

• If the Initiating Member submits a SAM sweep order to a SAM Auction, the stop price, SAM responses, and executions are permitted at a price inferior to the Initial NBBO. A ''SAM sweep order'' or ''SAM ISO'' is the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Rule 27.1) because the submitting Options Member routed an ISO(s) simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the EDGX Options Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the AIM [sic] Agency Order.[18]

The System rejects or cancels both an Agency Order and Solicited Order submitted to a SAM Auction that do not meet these conditions.[19]

Upon receipt of an Agency Order that meets the above conditions, the SAM Auction process commences.[20] One or more SAM Auctions in the same series may occur at the same time. To the extent there is more than one SAM Auction in a series underway at a time, the SAM Auctions conclude sequentially based on the exact time each SAM Auction commenced, unless terminated early pursuant to proposed paragraph (d). At the time each SAM Auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) and takes into account all SAM Auction responses and unrelated orders in place at the exact time of conclusion. In the event there are multiple SAM Auctions underway that are each terminated early pursuant to proposed paragraph (d), the System processes the SAM Auctions sequentially based on the exact time each SAM Auction commenced.[21]

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the minimum price increment for the Agency Order and Solicited Order, which may not be smaller than $0.01. The Exchange does not believe it needs this flexibility, and thus the proposed rule change applies the $0.01 increment to all classes.

[10] *See* proposed Rule 21.21(a)(5). The Post Only designation is not currently available on Cboe Options. The Exchange believes this is appropriate, as the purpose of a Post Only order is to not execute upon entry and instead rest in the EDGX Options Book, while the purpose of orders submitted into a SAM Auction is to receive an execution following the auction but prior to entering the EDGX Options Book. *See also* Rule 21.19(a)(5).

[11] *See* proposed Rule 21.21(a)(6). Cboe Options Rule 6.74B is silent on when a SAM Auction may be initiated. However, the Exchange understands that the proposed rule change is consistent with Cboe Options functionality. *See also* Rule 21.19(a)(6).

[12] *See* proposed Rule 21.21(a)(7). Cboe Options Rule 6.74B is silent on whether a SAM Auction may be initiated when the NBBO is crossed. However, the proposed rule change is consistent with the proposed requirement (and Cboe Options Rule 6.74B(b)(1)(A) and (2)(A)(1)) that the stop price and execution price be at or better than the initial NBBO (as discussed below), as well as linkage rules that do not permit executions at prices that trade through the NBBO (see Rule 27.2).

[13] *See* proposed Rule 21.21(a). Cboe Options Rule 6.74B does not specify whether an Agency Order and Solicited Order will be rejected or cancelled if they do not meet the SAM eligibility requirements. However, the Exchange understands that the proposed rule change is consistent with Cboe Options functionality. The proposed SAM Auction eligibility requirements (other than the minimum size) are the same as the AIM Auction eligibility requirements. *See* Rule 21.19(a).

[14] The Exchange notes that while other exchange rules do not specify whether the contra-side order in a solicitation auction mechanism may consist of multiple orders, the contra-side order for Qualified Contingent Cross Orders (see Rule 21.1(d)(10)), which similarly have a minimum quantity requirement and are fully crossed against an initiating order that must be for a minimum number of contracts, may consist of multiple contra-side orders. However, ISE Regulatory Information Circular 2014–013 states that the contra-side order submitted into a crossing mechanism (including the ISE solicited order mechanism) may consist of one or more parties.

[15] *See* proposed Rule 21.21(b)(1); *see also* Cboe Options Rule 6.74B(b)(1)(A).

[16] *See* proposed Rule 21.21(b)(2). These conditions regarding orders on the same side as the Agency Order are the same as those applicable to AIM for orders of 50 contracts or more. *See* Rule 21.19(b). Cboe Options Rule 6.74B is silent regarding whether the stop price must be at or better than the same-side Cboe Options best bid or offer; however, the execution price must be at or better than the Cboe Options best bid or offer.

[17] *See* proposed Rule 21.21(b)(3). Cboe Options Rule 6.74B is silent regarding whether the stop price must be at or better than the opposite-side Cboe Options best bid or offer; however, the execution price may not be at the same price as priority customer orders resting on the book on the opposite side of the Agency Order (unless the priority customer orders execute against the Agency Order).

[18] *See* proposed Rule 21.21(b)(4). Cboe Options Rule 6.74B is silent on whether ISOs are permitted with respect to SAM auctions. However, ISOs are similarly permitted for AIM Auctions, and the proposed definition of a SAM ISO is consistent with linkage rules. *See* Rules 21.19(b)(3)(A) and 27.1.

[19] *See* proposed Rule 21.21(b).

[20] *See* proposed Rule 21.21(c).

[21] *See* proposed Rule 21.21(c)(1). This provision regarding concurrent SAM Auctions is similar to the AIM provision that permits concurrent AIM Auctions for Agency Orders of 50 contracts or more.

The Exchange notes it is also possible for various types of auctions (such as an AIM Auction or a complex order auction (''COA'')) to occur concurrently in the same series, and at the end of each auction, it is possible for interest resting in the EDGX Options Book to trade against any of the auctioned orders in the series. While these auctions may be occurring at the same time, they will be processed in the order in which they are terminated (similar to how the System processes SAM Auctions as discussed above). In other words, suppose there is an AIM Auction, a SAM Auction, and a COA all occurring in the same series, which began and will terminate in that order, and each of which last 100 milliseconds. While it is possible for all three auctions to terminate nearly simultaneously, the System will still process them in the order in which they terminate. When the AIM Auction terminates, the System will process it in accordance with Rule 21.19, and the auctioned order may trade against any resting interest (in addition to the contra-side order and responses submitted to that AIM Auction, which may only trade against the order auctioned in that AIM pursuant to Rule 21.19). The System will then process the SAM Auction when it terminates, and the auctioned order may trade against any resting interest that did not execute against the AIM order (in addition to the contra-side order and responses submitted to that SAM Auction, which may only trade against the order auctioned in that SAM pursuant to proposed Rule 21.21). Finally, the System will then process the COA Auction when it terminates, and the COA order may leg into the EDGX Options Book and trade against any resting interest that did not execute against the AIM order or SAM order (in addition to any interest resting on the complex order book and COA responses pursuant to Rule 21.20).

The Exchange System initiates the SAM Auction process by sending a SAM Auction notification message detailing the side, size, price, origin code, Auction ID, and options series of the Agency Order to all Options Members that elect to receive SAM Auction notification messages. SAM Auction notification messages are not included in the disseminated BBO or OPRA.[22] The ''SAM Auction period'' is a period of time determined by the Exchange, which may be no less than 100 milliseconds and no more than one second.[23] An Initiating Member may not modify or cancel an Agency Order or Solicited Order after submission to a SAM Auction.[24]

Any User other than the Initiating Member (determined by EFID) may submit responses to a SAM Auction that are properly marked specifying size, side of the market, and the Auction ID for the SAM Auction to which the User is submitting the response.[25] A SAM response may specify a limit price or be treated as market. A SAM response may only participate in the SAM Auction with the Auction ID specified in the response.[26]

- The minimum price increment for SAM responses is $0.01. The System rejects a SAM response that is not in a $0.01 increment.[27]
- SAM buy (sell) responses are capped at the Exchange best offer (bid), or $0.01 better than the Exchange best offer (bid) if it is represented by a Priority Customer order resting on the EDGX Options Book (unless the Agency Order is a SAM ISO) that exists at the conclusion of the SAM Auction. The System executes SAM responses, if possible, at the most aggressive permissible price not outside the BBO at the conclusion of the SAM Auction or the Initial NBBO.[28] Capping the prices of these responses based on prices at the conclusion of the SAM Auction will ensure any changes to the BBO or prices of orders resting in the Book that occur during the SAM Auction will be considered. This will ensure responses are able to execute at the most aggressive permissible prices. This will ensure the execution price does not cross the Initial NBBO in accordance with linkage rules. Additionally, proposed subparagraph (e) requires the execution price to be at or between the BBO at the conclusion of the SAM Auction. Therefore, as proposed, the price at which any response may execute will ultimately not be through the Initial NBBO or the BBO at the conclusion of the AIM [sic] Auction.
- A User may submit multiple SAM responses at the same or multiple prices to a SAM Auction. For purposes of the SAM Auction, the System aggregates all of a User's orders and quotes resting on the EDGX Options Book and SAM responses for the same EFID at the same price.[29] The Exchange believes this is appropriate since all interest at a single price is considered for execution against the Agency Order at that price, and can then together be subject to the size cap, as discussed below. This (combined with the proposed size cap) will prevent an Options Member from submitting multiple orders, quotes, or responses at the same price to obtain a larger pro-rata share of the Agency Order.
- The System caps the size of a SAM response, or the aggregate size of a User's orders and quotes resting on the EDGX Options Book and SAM responses for the same EFID at the same price, at the size of the Agency Order (*i.e.,* the System ignores size in excess of the size of the Agency Order when processing the SAM Auction).[30] This Exchange believes this is reasonable to prevent an Options Member from submitting an order, quote, or response with an extremely large size in order to obtain a larger pro-rata share of the Agency Order.
- SAM responses must be on the opposite side of the market as the Agency Order. The System rejects a SAM response on the same side of the market as the Agency Order.[31]

See Rule 21.19(c)(1). Cboe Options Rule 6.74B does not permit concurrent SAM Auctions.

[22] *See* proposed Rule 21.21(c)(2); *see also* Cboe Options Rule 6.74B(b)(1)(B).

[23] *See* proposed Rule 21.21(c)(3); *see also* Cboe Options Rule 6.74B(b)(1)(C). Pursuant to Rule 16.3, the Exchange will announce the length of the SAM Auction period via specification, Exchange Notice, or Regulatory Circular.

[24] *See* proposed Rule 21.21(c)(4); *see also* Rule 21.19(c)(4) (corresponding provision in AIM). Cboe Options Rule 6.74B does not contain this detail; however, the Exchange understands this is consistent with current Cboe Options functionality.

[25] The System disregards any Post Only instruction applied to a SAM response, as that instruction is inconsistent with the purpose of a SAM response, which is to execute against the Agency Order at the conclusion of a SAM Auction (and thus not post to the EDGX Options Book). As a result, the System handles a SAM response with a Post Only instruction in the same manner as all other SAM responses, which is as providers of liquidity (*i.e.,* makers).

[26] *See* proposed Rule 21.21(c)(5); *see also* Rule 21.19(c)(5) (corresponding provision in AIM). Cboe Options Rule 6.74B does not specify that a response may be market as well as limit or that a response may only participate in the auction specific in the response.

[27] *See* proposed Rule 21.21(c)(5)(A). Cboe Options permits it to determine the minimum increment of SAM responses, which may not be less than $0.01. *See* Cboe Options Rule 6.74B(b)(1)(E). The Exchange does not believe it needs that flexibility.

[28] *See* proposed Rule 21.21(c)(5)(B). Cboe Options does not have a corresponding provision; however, this is the same as the corresponding provision for the Exchange's AIM Auction. The Exchange notes it intends to similarly cap AIM responses in the corresponding rule provision in Rule 21.19(c)(5)(B) in a separate rule filing.

[29] *See* proposed Rule 21.21(c)(5)(C). Cboe Options does not specify whether a participant may submit multiple responses at the same price or whether the size of all of a participant's interest at the same price will be aggregated; however, this is the same as the corresponding provision for the Exchange's AIM Auction. *See* Rule 21.19(c)(5)(C).

[30] *See* proposed Rule 21.21(c)(5)(D). This is in contrast to Cboe Options, which requires responses to not exceed the size of the Agency Order. *See* Cboe Options Rule 6.74B(b)(1)(F). However, this is the same as the corresponding provision for the Exchange's AIM Auction. *See* Rule 21.19(c)(5)(D).

[31] *See* proposed Rule 21.21(c)(5)(E). Cboe Options does not specify whether a response will be rejected if it is not on the opposite side of the Agency Order; however, the Exchange understands this is

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• SAM responses are not visible to SAM Auction participants or disseminated to OPRA.[32]

• A User may modify or cancel its SAM responses during the SAM Auction.[33]

A SAM Auction concludes at the earliest to occur of the following times:

• the end of the SAM Auction period;

• upon receipt by the System of a Priority Customer order on the same side of the market with a price the same as or better than the stop price that would post to the EDGX Options Book;

• upon receipt by the System of an unrelated order or quote that is not a Priority Customer order on the same side of the market as the Agency Order that would cause the stop price to be outside of the EDGX BBO;

• the market close; and

• any time the Exchange halts trading in the affected series, provided, however, that in such instance the SAM Auction concludes without execution.

An unrelated market or marketable limit order (against the EDGX BBO), including a Post Only Order,[34] on the opposite side of the Agency Order received during the SAM Auction does not cause the SAM Auction to end early and executes against interest outside of the SAM Auction. If contracts remain from such unrelated order at the time the SAM Auction ends, they may be allocated for execution against the Agency Order pursuant to proposed paragraph (e).[35] Because these orders may have the opportunity to trade against the Agency Order following the conclusion of the SAM Auction, which execution must still be at or better than the Initial NBBO and EDGX Options BBO existing at the conclusion of the SAM Auction, the Exchange does not believe it is necessary to cause a SAM Auction to conclude early in the event the Exchange receives such orders. This will provide more time for potential price improvement, and the unrelated order will have the opportunity to trade against the Agency Order in the same manner as all other contra-side interest.

At the conclusion of the SAM Auction, the System executes the Agency Order against the Solicited Order or contra-side interest (which includes orders and quotes resting in the EDGX Options Book and SAM responses) at the best price(s) as follows. Any execution price(s) must be at or between the BBO existing at the conclusion of the SAM Auction and at or between the Initial NBBO:[36]

• The System executes the Agency Order against the Solicited Order at the stop price if there are no Priority Customer Orders (including Priority Customer AON Orders) on the opposite side of the Agency Order resting in the EDGX Options Book at the stop price and the aggregate size of contra-side interest at an improved price(s) is insufficient to satisfy the Agency Order.

• The System executes the Agency Order against contra-side interest (and cancels the Solicited Order) if (A) there is a Priority Customer order (including a Priority Customer AON order) on the opposite side of the Agency Order resting on the EDGX Options Book at the stop price and the aggregate size of the Priority Customer order and other contra-side interest at the stop price or an improved price(s) is sufficient to satisfy the Agency Order or (B) the aggregate size of contra-side interest at an improved price(s) is sufficient to satisfy the Agency Order. The Agency Order against such contra-side interest occurs at each price level, to the price at which the balance of the Agency Order can be fully executed, in the following order:

○ Priority Customer orders (including Priority Customer AON orders) on the EDGX Options Book (non-AON orders before AON orders, each in time priority);

○ remaining contra-side trading interest (including non-Priority Customer orders and quotes on the EDGX Options Book and SAM responses) pursuant to Rule 21.8(c);

○ any nondisplayed Reserve Quantity (Priority Customer before non-Priority Customer, each in time priority); and

○ any non-Priority Customer AON orders, if there is sufficient size to satisfy the AON order.

• The System cancels the Agency Order and Solicited Order with no execution if:

○ execution of the Agency Order against the Solicited Order at the stop price would not be at or between the EDGX BBO at the conclusion of the SAM Auction or at or between the Initial NBBO; or

○ there is a Priority Customer order (including a Priority Customer AON order) resting on the opposite side of the Agency Order at the stop price on the EDGX Options Book, and the aggregate size of the Priority Customer order and any other contra-side interest is insufficient to satisfy the Agency Order.[37]

• The System cancels or rejects any unexecuted SAM responses (or unexecuted portions) at the conclusion of the SAM Auction.[38]

The Exchange believes the proposed rule change is consistent with the AON nature of solicitation mechanisms and the priority order applicable to executions following a SAM Auction at the stop price, as well as general priority provisions.[39] The proposed provisions regarding the execution of the Agency Order at the conclusion of a SAM Auction is similar to the corresponding provisions for a Cboe Options SAM, as well as current Rules regarding priority and allocation of resting orders and

consistent with Cboe Options functionality and the same as the corresponding provision for the Exchange's AIM Auction. Additionally, it is reasonable given that the purpose of a response is to trade against the Agency Order. *See* Rule 21.19(c)(5)(E).

[32] *See* proposed Rule 21.21(c)(5)(F); *see also* Cboe Options Rule 6.74B(b)(1)(D).

[33] *See* proposed Rule 21.21(c)(5)(G). Cboe Options does not specify whether responses may be cancelled during the auction; however, this is the same as the corresponding provision for the Exchange's AIM Auction. *See* Rule 21.19(c)(5)(I). Unlike Cboe Options Rule 6.74B, the proposed rule change permits responses for the account of an options market-maker from another options exchange. Other options exchanges similarly permit such responses in solicited auction mechanisms. *See, e.g.,* ISE Rule 716(e); and MIAX Rule 515A(b).

[34] Any Post Only order resting on the EDGX Options Book at the conclusion of the SAM Auction that executes against the Agency Order pursuant to proposed paragraph (e) executes in the same manner as any other order type of order resting on the EDGX Options Book, which is as providers of liquidity (*i.e.,* makers).

[35] *See* proposed Rule 21.21(d). The proposed reasons why a SAM Auction may conclude early differ from the reasons why a Cboe Options SAM Auction may conclude early, but the proposed reasons are the same as those that will cause an AIM Auction to conclude early. *See* Rule 21.19(d). Similarly, a Cboe Options SAM Auction will conclude early for the same reasons that cause a Cboe Options AIM Auction to terminate early. *See* Cboe Options Rule 6.74B(b)(2).

[36] *See* proposed Rule 21.21(e); *see also* Cboe Options Rule 6.74B(b)(2)(A) (which provides the execution price must be at or better than the initial auction NBBO and that an execution will occur at prices equal to or better than the Cboe Options BBO).

[37] *See* proposed Rule 21.21(e); *see also* Rule 21.19(e).

[38] *See id.*

[39] *See* Rule 21.8, which provides that at a single price level: (a) Priority Customer orders have priority over non-Priority Customer orders, and Priority Customer orders at the same price are allocated in time priority; (b) non-customer orders have next priority and are allocated in a pro-rata manner; (c) displayed orders have priority over nondisplayed orders, and nondisplayed portions of Reserve Orders are allocated in a pro-rata manner, except nondisplayed portions of Priority Customer Reserve Orders trade ahead of non-customer Reserve Orders; and AON orders have last priority (including after nondisplayed Reserve Quantity). The Exchange notes it may apply an entitlement for Designated Primary Market Makers or Preferred market Makers, which entitlement would apply after Priority Customer orders. This entitlement is inapplicable in the setting of an auction; however, it is comparable to order when a Solicited Order receives priority. The Exchange notes, unlike the allocation following other executions, the proposed rule change prioritizes Priority Customer AON orders in the same manner as all other Priority Customer orders in executions following SAM Auctions.

quotes.[40] The proposed priority will ensure execution of the Agency Order at the stop price if there is sufficient interest while protecting Priority Customer orders (except AON orders) resting on the EDGX Options Book in accordance with the general principle of customer priority. This will ensure the Agency Order is allocated in a manner consistent with the standard priority of allocation on the Exchange rules that distinguish between Priority Customers and displayed and non-displayed interest in a manner that will help ensure a fair and orderly market by maintaining priority of orders and quotes while still affording the opportunity for price improvement in each SAM Auction commenced on the Exchange.

Proposed Rule 21.21, Interpretation and Policy .01 provides that prior to entering Agency Orders into a SAM Auction on behalf of customers, Initiating Members must deliver to the customer a written notification informing the customer that his order may be executed using the SAM Auction. The written notification must disclose the terms and conditions contained in this Rule 21.21 and be in a form approved by the Exchange.[41]

Rule 22.12 prevents an Options Member from executing agency orders to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the Options Member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for an Options Member to establish a relationship with a Priority Customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency order as principal. Under Rule 21.21, Initiating Members may enter contra-side orders that are solicited. SAM provides a facility for Options Members that locate liquidity for their customer orders. Options Members may not use the SAM Auction to circumvent Rule 21.19 or 22.12 limiting principal transactions. This may include, but is not limited to, Options Members entering contra-side orders that are solicited from (a) affiliated broker-dealers or (b) broker-dealers with which the Options Member has an arrangement that allows the Options Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal.[42]

The following examples demonstrate how orders will be executed in a SAM Auction:

Example #1

XYZ Jan 50 Calls
NBBO: 1.10—1.25
BBO: 1.10—1.30 (no Priority Customer orders)
Paired order to execute 2000 contracts AON (Agency Order to sell) at 1.10

A SAM Auction notification message is sent to all Options Members that elect to receive SAM Auction notification messages, which shows the option, size, side, and price. The SAM Auction timer begins, and the System starts the SAM Auction to sell at 1.10.

During the SAM Auction, the System receives the following responses in the following order:

- Response 1 to buy 2000 at 1.10
- Response 2 to buy 2000 at 1.10
- Response 3 to buy 5000 at 1.10
- Response 4 to buy 1000 at 1.20

The aggregate responses did not improve the price of the entire Agency Order, and there are no Priority Customer orders at the stop price, so at the conclusion of the SAM Auction, the System executes the Solicited Order against the Agency Order at a price of 1.10 and cancels the SAM responses.

Example #2

XYZ Jan 50 Calls
NBBO: 1.10—1.25
BBO: 1.10—1.30 (no Priority Customer orders)
Paired order to execute 2000 contracts AON (Agency Order to sell) at 1.10

A SAM Auction notification message is sent to all Options Members that elect to receive SAM Auction notification messages, which shows the option, size, side, and price. The SAM Auction timer begins, and the System starts the SAM Auction to sell at 1.10.

During the SAM Auction, the System receives the following responses in the following order:

- Response 1 to buy 2000 at 1.10
- Response 2 to buy 2000 at 1.10
- Response 3 to buy 5000 at 1.10
- Response 4 to buy 1000 at 1.20
- Response 5 to buy 2000 at 1.15

There is sufficient size among the SAM responses to improve the price of the entire Agency Order, so at the conclusion of the SAM Auction, the System executes 1000 contracts of the Agency Order at a price of 1.20 against Response 4 and 1000 contracts of the Agency Order at a price of 1.15 against Response 5, and cancels the Solicited Order and Responses 1, 2, 3, and 5 (the remaining 1000).

Example #3

XYZ Jan 50 Calls
NBBO: 1.10—1.25
BBO: 1.10 (200)—1.30 (no Priority Customer orders)
Paired order to execute 2000 contracts AON (Agency Order to sell) at 1.11

A SAM Auction notification message is sent to all Options members that elect to receive SAM Auction notification messages, which shows the option, size, side, and price. The SAM Auction timer begins, and the System starts the SAM Auction to sell at 1.11.

During the SAM Auction, the System receives the following responses in the following order:

- Response 1 to buy 2000 at 1.11
- Response 2 to buy 2000 at 1.11
- Response 3 to buy 5000 at 1.11
- Response 4 to buy 1000 at 1.12
- Unrelated Order A to sell 500 at 1.10

The SAM Auction terminates when the System receives Unrelated Order A, because it is marketable against the EDGX best bid of 1.10, and would cause the stop price to be outside of the EDGX BBO if it immediately executed. The aggregate responses did not improve the price of the entire Agency Order, and there are no Priority Customer orders at the stop price, so at the conclusion of the SAM Auction, the System executes the Solicited Order against the Agency Order at a price of 1.11 and cancels the SAM responses. The System then executes 200 contracts of Unrelated Order A against the resting order at a 1.10 at that price, and then enters 300 contracts of Unrelated Order A onto the Book. The EDGX BBO then becomes 1.08—1.10 (which, as noted above, would have caused the stop price to be outside of the EDGX BBO).

Example #4

XYZ Jan 50 Calls
NBBO: 1.10—1.25
BBO: 1.10—1.30 (Priority Customer order for 20 included in the bid, and no Priority Customer order included in the offer)
Paired order to execute 2000 contracts AON (Agency Order to sell) at 1.11 (one increment better than a resting Priority Customer order on the

[40] *See* Cboe Options Rule 6.74B(b)(2)(A) (which states if there are priority customer orders and there is sufficient size (considering all resting orders, electronic quotes and responses) to execute the Agency Order, the Agency Order will be executed against these interests and the solicited order will be cancelled, and if there are priority customer orders and there is not sufficient size (considering all resting orders, electronic quotes and responses), both the Agency Order and the solicited order will be cancelled).

[41] *See also* Cboe Options Rule 6.74B, Interpretation and Policy .02.

[42] *See* proposed Interpretation and Policy .02; *see also* Cboe Options Rule 6.74B, Interpretation and Policy .03.

opposite side of the EDGX Options Book).

A SAM Auction notification message is sent to all Options Members that elect to receive SAM Auction notification messages, which shows the option, size, side, and price. The SAM Auction timer begins, and the System starts the SAM Auction to sell at 1.11.

During the SAM Auction, the System receives the following responses in the following order:

- Response 1 to buy 2000 at 1.11
- Response 2 to buy 2000 at 1.11
- Response 3 to buy 1000 at 1.15
- Response 4 to buy 900 at 1.12
- Priority Customer order to buy 100 at 1.11

There is sufficient size among the SAM responses at prices better than the stop price and the Priority Customer order at the stop price, so at the conclusion of the SAM Auction, the System executes 1000 contracts of the Agency Order at a price of 1.15 against Response 3, 900 contracts of the Agency Order at a price of 1.12 against Response 4, and 100 contracts of the Agency Order at a price of 1.11 against the Priority Customer order, and cancels the Solicited Order and Responses 1 and 2.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[43] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[44] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[45] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to add certain system functionality currently offered by Cboe Options to the Exchange's System in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. This will provide Users with greater harmonization of price improvement auction mechanisms available among the Cboe Affiliated Exchanges.

The proposed rule change will provide market participants with an additional auction mechanism that will provide them with greater flexibility in pricing larger-sized orders and may provide more opportunities for price improvement.[46] SAM as proposed will function in a substantially similar manner as AIM, the Exchange's current price improvement mechanism—the differences relating primarily to the minimum size requirement and all-or-none nature of SAM. Additionally, the proposed auction mechanism provides equal access to the exposed Agency Orders for all market participants, as all Options Members that subscribe to the Exchange's data feeds with the opportunity to interact with orders submitted into SAM Auctions.[47] SAM is intended to benefit investors, because it is designed to provide investors seeking to execute large option orders with opportunities to access additional liquidity and receive price improvement. It will provide Options Members that locate liquidity for their customers' larger-sized orders a facility in which to execute those orders, potentially at improved prices. The proposed rule change may result in increased liquidity available at improved prices for larger-sized orders, with competitive final pricing out of the Initiating Member's control. The Exchange believes SAM will promote and foster competition and provide more options contracts with the opportunity for price improvement.

The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because the proposed SAM Auction is similar to other solicitation auction mechanisms currently available at other options exchanges.[48] The general framework of the proposed SAM Auction process (such as the eligibility requirements, the auction response period, the same-side stop price requirements, response requirements, and auction notification process),[49] is substantively the same as the framework for the AIM price improvement auction the Exchange's current price improvement auction. The primary features of the proposed SAM Auction process are similar to the solicitation auction mechanisms of other options exchanges, including Cboe Options SAM, as discussed above and below. The clarity in how the proposed price improvement auction will function and its consistency with similar auctions at other exchanges will help promote a fair and orderly national options market system.

Further, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic solicitation mechanism, while providing an opportunity for price improvement for Agency Orders. The Exchange believes that its proposal will allow the Exchange to better compete for solicited transactions, while providing an opportunity for price improvement for Agency Orders and assuring that Priority Customers (including Priority Customer AON orders) on the EDGX Options Book are protected. The new solicitation mechanism should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants.

The Exchange believes the proposed rule change will result in efficient trading and reduce the risk for investors that seek access to additional liquidity and price improvement for larger-sized orders by providing additional opportunities to do so. The proposed priority and allocation rules in the SAM Auction are similar to the Exchange's current priority and allocation rules that give priority to displayed Priority Customer orders,[50] while also providing priority to Priority Customer AON orders. The Exchange believes this will ensure a fair and orderly market by maintaining priority of orders and

[43] 15 U.S.C. 78f(b).

[44] 115 U.S.C. 78f(b)(5).

[45] *Id.*

[46] *See* Securities Exchange Act Release Nos. 49141 (January 28, 2004), 69 FR 5625 (February 5, 2004) (SR–ISE–2001–22); 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR–CBOE–2008–14); and 72009 (April 23, 2014), 79 FR 24032 (April 29, 2014) (SR–MIAX–2014–09).

[47] Any Options Member can subscribe to the options data disseminated through the Exchange's data feeds.

[48] *See, e.g.,* Cboe Options Rule 6.74B; ISE Rule 716(e); and MIAX Rule 515A(b).

[49] *See* Rule 21.19.

[50] Pursuant to Rule 21.8, at a single price level, Priority Customer orders have priority over non-Priority Customer orders, which have priority over all nondisplayed orders (*i.e.,* the Reserve Portion of Priority Customer and non-Priority Customer Reserve Orders).

quotes and protecting Priority Customer orders, while still affording the opportunity for price improvement during each SAM Auction commenced on the Exchange. The proposed allocation ensures that the Agency Order will be filled if there is a Priority Customer order on the EDGX Options Book at the stop price and sufficient other contra-side interest to satisfy the Agency Order.

By keeping the priority and allocation rules for a SAM Auction similar to the standard allocation used on the Exchange, the proposed rule change reduces the ability of market participants to misuse the SAM Auction to circumvent standard priority rules in a manner that is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade on the Exchange. The proposed execution and priority rules will allow orders to interact with interest in the EDGX Options Book, and will allow interest on the EDGX Options Book to interact with option orders in the price improvement mechanisms in an efficient and orderly manner. The Exchange believes this interaction of orders will benefit investors by increasing the opportunity for option orders to receive executions, while also enhancing the execution quality for orders resting on the Book. The proposed priority is also substantially similar to that of corresponding solicitation auction mechanisms of other options exchanges.[51]

The proposed SAM Auction eligibility requirements are reasonable and promote a fair and orderly market and national market system, because they are substantially similar to the eligibility requirements for other exchanges' solicited order mechanisms,[52] and benefit investors by providing clarity regarding how they may initiate a SAM Auction. Additionally, other than the minimum size requirement and AON requirement (which are standard for solicited order mechanisms), the eligibility requirements are virtually the same as those for AIM, the Exchange's other price improvement mechanism.[53] This will further benefit investors by providing consistency across the Exchange's price improvement mechanisms.

The proposed rule that an Initiating Member may not designate an Agency Order or Initiating Order as Post Only protects investors, because it provides transparency regarding functionality that will not be available for SAM. The Exchange believes this is appropriate, as the purpose of a Post Only order is to not execute upon entry and instead rest in the EDGX Options Book, while the purpose of submitting orders to a SAM Auction is to receive an execution following the auction and not enter the EDGX Options Book. Pursuant to current and proposed Rule 21.21, an Agency Order will fully execute against contra-side interest (possibly against the Solicited Order, which must be for the same size as the Agency Order), or will be cancelled in the event there is no execution following a SAM Auction, and thus there cannot be remaining contracts in an Agency Order or Solicited Order to enter the EDGX Options Book.

The proposed rule change to state that the minimum size requirement of 500 or more standard option contracts applies to the equivalent number of mini-option contracts (*i.e.,* 5,000 mini-option contracts) promotes just and equitable principles of trade. Rule 19.6, Interpretation and Policy .07 permits the listing of mini-options, which is an option with a 10 share deliverable of the underlying security rather than 100 share deliverable of the underlying security (which is the standard deliverable for a standard option contract). The proposed change to state that 500 standard option contracts is consistent with 5,000 mini-option contracts is consistent with this definition of mini-options. This provides transparency to investors that SAM functionality and the potential for price improvement is available to Agency Orders for large orders of mini-options as well as standard options.

The proposed rule change to prohibit an Agency Order and Solicited Order from both being for the accounts of Priority Customers is reasonable, because the Exchange believes it would be in the interests of such pairs of orders to be submitted to a Customer-to-Customer AIM Immediate Cross pursuant to Rule 21.19(f) pursuant to which they can be executed immediately. The Exchange believes there will be minimal demand to submit pairs of Priority Customer orders into SAM Auctions given its offering of immediate cross functionality via AIM.

The Exchange believes the proposed rule change to permit the Solicited Order to be comprised of multiple orders that total the size of the Agency Order may increase liquidity and opportunity for Agency Orders to participate in SAM Auctions, and therefore provide Agency Orders with additional opportunities for price improvement, which is consistent with the principles behind the SAM Auction. The Exchange believes that this will be beneficial to participants because allowing multiple contra-parties should foster competition for filling the contra-side order and thereby result in potentially better prices, as opposed to only allowing one contra-party and, thereby requiring that contra-party to do a larger size order which could result in a worse price for the trade. Another exchange permits the contra-side in a solicited auction mechanism to be comprised of multiple contra-parties.[54] The Exchange notes the contra-side of a Qualified Contingent Cross order may be comprised of multiple orders.[55]

As discussed above, the Exchange has proposed to allow SAM Auctions to occur concurrently with other SAM Auctions. Although SAM Auctions for Agency Orders will be allowed to overlap, the Exchange does not believe this raises any issues that are not addressed through the proposed rule change described above. For example, although overlapping, each SAM Auction will be started in a sequence and with a time that will determine its processing. Thus, even if there are two SAM Auctions that commence and conclude, at nearly the same time, each SAM Auction will have a distinct conclusion at which time the SAM Auction will be allocated. In turn, when the first Auction concludes, unrelated orders that then exist will be considered for participation in the SAM Auction. If unrelated orders are fully executed in such SAM Auction, then there will be no unrelated orders for consideration when the subsequent SAM Auction is processed (unless new unrelated order interest has arrived). If instead there is remaining unrelated order interest after the first SAM Auction has been allocated, then such unrelated order interest will be considered for allocation when the subsequent SAM Auction is processed. As another example, each SAM response is required to specifically

[51] *See, e.g.,* Cboe Options Rule 6.74B; ISE Rule 716(e); and MIAX Rule 515A(b).

[52] *See* Cboe Options Rule 6.74B(a) and (b)(1) and Interpretation and Policy .03; and MIAX Rule 515A(b)(1) and (2) and Interpretation and Policy .04 (which permit applicability to any class, prohibit appointed market-makers from being solicited, impose the same minimum size and all-or-none requirement, has the same minimum increment, and requires Agency Orders to be marked for SAM processing). The proposed rule change that states a SAM Auction may not commence until after the market open is reasonable, as execution following a SAM Auction would not be possible until after the market open and when there is a BBO and NBBO.

[53] *See* Rule 21.19(a).

[54] *See* ISE Rule 716(e) and ISE Regulatory Information Circular 2014–013.

[55] Unlike orders submitted to a SAM Auction, Qualified Contingent Cross orders may immediately execute and are not exposed to the market for possible price improvement.

identify the Auction for which it is targeted and if not fully executed will be cancelled back at the conclusion of the Auction. Thus, SAM responses will be specifically considered only in the specified SAM Auction.

The Exchange does not believe that allowing multiple auctions to overlap for Agency Orders presents any unique issues that differ from functionality already in place on the Exchange or other exchanges. Pursuant to Rule 21.19(c)(1), multiple AIM Auctions for Agency Orders for 50 or more contracts may overlap. Additionally, other options exchanges permit other auctions to overlap.[56]

The proposed auction process will promote a free and open market, because it ensures equal access to information regarding SAM Auctions and the exposed Agency Orders for all market participants, as all Options Members that subscribe to the Exchange's data feeds with the opportunity to interact with orders submitted into SAM Auctions.[57] The Exchange has proposed a range between no less than 100 milliseconds and no more than one second for the duration of a SAM Auction.[58] This will provide investors with more timely execution of their options orders than a mechanism that has a one second auction, while ensuring there is an adequate exposure of orders in EDGX SAM. This proposed auction response time should provide investors with the opportunity to receive price improvement for larger-sized orders through SAM while reducing market risk. The Exchange believes a briefer time period reduces the market risk for the Initiating Member, versus an auction with a longer period, as well as for any Options Member providing responses to a broadcast. As such, the Exchange believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors and the public interest. All Options Members will have an equal opportunity to respond with their best prices during the SAM Auction. Since the Exchange considers all interest present in the System, and not solely SAM response, for execution against the Agency Order, those participants who are not explicit responders to a SAM Auction may receive executions via SAM as well.

The proposed SAM Auction response requirements are reasonable and promote a fair and orderly market and national market system, because they are substantially similar to the response requirements for other exchanges' solicited order mechanisms,[59] and benefit investors by providing clarity regarding how they may respond to a SAM Auction. Additionally, other than not restricting Times in Force or MTP Modifiers available for responses (which restrictions the Exchange does not currently believe are necessary for SAM responses), the eligibility requirements are virtually the same as those for AIM responses, the Exchange's other price improvement mechanism.[60] This will further benefit investors by providing consistency across the Exchange's price improvement mechanisms.

The proposed rule change will also perfect the mechanism of a free and open market and a national market system, as it is consistent with linkage rules. Proposed Rule 21.21 does not permit Agency Orders to be submitted when the NBBO is crossed and requires Agency Order execution prices at the end of SAM Auctions to be at or between the Initial NBBO and the EDGX BBO at the conclusion of the SAM Auction. The proposed stop price requirements and the events to terminate a SAM Auction early further ensure execution prices at or better than the NBBO and EDGX BBO. Additionally, the proposed SAM ISO order type (which is similar to current AIM ISO functionality) will provide Options Members with an efficient method to initiate a SAM Auction while preventing trade-throughs.

Unlike the rules of other exchanges, the Exchange will not conclude a SAM Auction early due to the receipt of an opposite side order. The Exchange believes this promotes just and equitable principles of trade, because these orders may have the opportunity to trade against the Agency Order following the conclusion of the SAM Auction, which execution must still be at or better than the Initial NBBO and EDGX Options BBO existing at the conclusion of the SAM Auction. The Exchange believes this will protect investors, because it will provide more time for price improvement, and the unrelated order will have the opportunity to trade against the Agency Order in the same manner as all other contra-side interest.

With respect to trading halts, as described herein, in the case of a trading halt on the Exchange in the affected series, the Auction will be cancelled without execution. Cancelling Auctions without execution in this circumstance is consistent with Exchange handling of trading halts in the context of continuous trading on EDGX Options and promotes just and equitable principles of trade and, in general, protects investors and the public interest.[61]

The proposed rule change is also consistent with Section 11(a)(1) of the Act[62] and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion (collectively referred to as ''covered accounts''), unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),[63] the ''G'' exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[64] and ''Effect vs. Execute'' exemption under Rule 11a2–2(T) under the Act.[65] The ''Effect vs. Execute'' exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To

[56] *See, e.g.,* ISE Rule 716(d), which governs ISE's facilitation mechanism and does not restrict such auctions to one auction at a time; and Boston Options Exchange (''BOX'') Rule 7270.

[57] Any Options Member can subscribe to the options data disseminated through the Exchange's data feeds.

[58] *See also* Cboe Options Rule 6.74B(b)(1)(C); ISE Rule 716, Supplementary Material .04; and MIAX Rule 515A(b)(2)(1)(C).

[59] *See* Cboe Options Rule 6.74B(a) and (b)(1) and Interpretation and Policy .03; and MIAX Rule 515A(b)(1) and (2) and Interpretation and Policy .04 (which permit applicability to any class, prohibit appointed market-makers from being solicited, impose the same minimum size and all-or-none requirement, has the same minimum increment, and requires Agency Orders to be marked for SAM processing). The proposed rule change that states a SAM Auction may not commence until after the market open is reasonable, as execution following a SAM Auction would not be possible until after the market open and when there is a BBO and NBBO.

[60] *See* Rule 21.19(a).

[61] The Exchange notes that trading on the Exchange in any option contract will be halted whenever trading in the underlying security has been paused or halted by the primary listing market and other circumstances. *See* Rule 20.3.

[62] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

[63] 15 U.S.C. 78k(a)(1)(A).

[64] 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1–1(T).

[65] 17 CFR 240.11a2–2(T).

comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[66] may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that Exchange Members entering orders into SAM would satisfy the requirements of Rule 11a2–2(T).

The Exchange does not operate a physical trading floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[67] The Exchange represents that the System and the proposed SAM Auction receive all orders electronically through remote terminals or computer-to-computer interfaces. The Exchange represents that orders for covered accounts from Options Members will be transmitted from a remote location directly to the proposed SAM mechanism by electronic means.

The second condition of Rule 11a2–2(T) requires that neither a member nor an associated person participate in the execution of its order once the order is transmitted to the floor for execution. The Exchange represents that, upon submission to the SAM Auction, an order or SAM response will be executed automatically pursuant to the rules set forth for SAM. In particular, execution of an order (including the Agency and the Soliciting [sic] Order) or a SAM response sent to the mechanism depends not on the Options Member entering the order or response, but rather on what other orders and responses are present and the priority of those orders and responses. Thus, at no time following the submission of an order or response is a Member able to acquire control or influence over the result or timing of order or response execution.[68] Once the Agency Order and Solicited Order has [sic] been transmitted, the Initiating Member that transmitted the orders will not participate in the execution of the Agency Order or Solicited Order. Initiating Members submitting Agency Orders and Solicited Orders will relinquish control to modify or cancel their Agency Orders and Solicited Orders upon transmission to the System. Further, no Member, including the Initiating Member, will see a SAM response submitted into SAM, and therefore and will not be able to influence or guide the execution of their Agency Orders, Solicited Orders, or SAM responses, as applicable.

Rule 11a2–2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the SAM Auction are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[69] The Exchange represents that the SAM Auction is designed so that no Options Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism.

Rule 11a2–2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[70] The Exchange recognizes that Options Members relying on Rule 11a2–2(T) for transactions effected through the SAM Auction must comply with this condition of the Rule and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

The Exchange believes that the instant proposal is consistent with Rule 11a2–2(T), and that therefore the exception should apply in this case.

The Exchange also believes that the proposed rule changes would further the objectives of the Act to protect investors by promoting the intermarket price protection goals of the Options Intermarket Linkage Plan.[71] The Exchange believes its proposal would help ensure inter-market competition across all exchanges and facilitate compliance with best execution practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed SAM Auction is voluntary for Options Members to use and will be available to all Options Members. As discussed above, the Exchange believes the proposed rule change should encourage Options Members to compete amongst each other by responding with their best price and size for a particular auction.

[66] The member may, however, participate in clearing and settling the transaction.

[67] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SRBSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[68] An Initiating Member may not cancel or modify an Agency Order or Solicited Order after it has been submitted into SAM. *See* proposed Rule 21.21(c)(4). Options Members may modify or cancel their responses after being submitted to into a SAM. *See* proposed Rule 21.21(c)(5)(G); *see also* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the ''1978 Release'')

[69] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release.

[70] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. *See also* 1978 Release, at 11548 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[71] *See* Rule 27.3 regarding Locked and Crossed Markets.

The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all orders submitted to a SAM Auction. With respect to the restriction on appointed market-makers being solicited, the Exchange believes market-makers will still have opportunities to provide liquidity to trade against Agency Orders by submitting quotes to rest on the EDGX Options Book or responses to a SAM Auction. With respect to the restriction on permitting a pair of Priority Customer orders to a SAM Auction, the Exchange believes this is appropriate given the immediate cross functionality available to pairs of Priority Customer orders. Options Members will continue to be able to immediately cross these pairs of orders via AIM.[72]

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, because the proposed changes, as described above and below, are based on rules for similar price improvement auction mechanisms at other options exchanges.[73] The general framework and primary features of the proposed SAM Auction process (such as the eligibility requirements, auction response period, same-side stop price requirements, response requirements, and auction notification process),[74] are substantively the same as the framework for the AIM price improvement auction the Exchange's current price improvement auction.

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish more uniform price improvement auction rules on the various options exchanges. The Exchange anticipates that this auction proposal will create new opportunities for the Exchange to attract new business and compete on equal footing with those options exchanges with auctions and for this reason the proposal does not create an undue burden on intermarket competition. Rather, the Exchange believes that the proposed rule would bolster intermarket competition by promoting fair competition among individual markets, while at the same time assuring that market participants receive the benefits of markets that are linked together, through facilities and rules, in a unified system, which promotes interaction among the orders of buyers and sellers. The Exchange believes its proposal would help ensure intermarket competition across all exchanges and facilitate compliance with best execution practices. In addition, the Exchange believes that the proposed rule change would help promote fair and orderly markets by helping ensure compliance with Options Order Protection and Locked and Crossed Market Rules. Thus, the Exchange does not believe the proposal creates a significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–047. 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 filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–047, and should be submitted on or before September 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[75]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17488 Filed 8–14–19; 8:45 am]

BILLING CODE 8011–01–P

[72] *See* Rule 21.19(f).

[73] *See, e.g.,* Cboe Options Rule 6.74B; ISE Rule 716(e); and MIAX Rule 515A(b).

[74] *See* Rule 21.19.

[75] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86620; File No. SR–NYSEArca–2019–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges To Adopt An Incremental Credit Under a Current Pricing Tier, Cross-Asset Tier 3

August 9, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

thereunder,[3] notice is hereby given that on August 1, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to adopt an incremental credit under a current pricing tier, Cross-Asset Tier 3. The Exchange proposes to implement the fee change effective August 1, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt an incremental credit under a current pricing tier, Cross-Asset Tier 3, that would provide an additional incentive for all ETP Holders (including Market Makers) [4] to provide liquidity in Tapes A and B Securities. The Exchange proposes to implement the fee change effective August 1, 2019.

The purpose of this proposed rule change is to introduce a new incremental credit of $0.0002 per share under Cross-Asset Tier 3 if an ETP Holder meets both the existing Cross-Asset Tier 3 requirements [5] and executes a designated percentage of volume of its US CADV, as described below.

Background

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.'' [6]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [7] Indeed, equity trading is currently dispersed across 13 exchanges,[8] 31 alternative trading systems,[9] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information for June 2019, no single exchange has more than 18% market share (whether including or excluding auction volume).[10] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in June 2019, the Exchange had 8.5% market share of executed volume of equity trades (excluding auction volume), down from 9.0% in March 2019.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. These fees vary month to month, and not all are publicly available. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

The Exchange operates a ''Maker-Taker'' model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the rebates and fees applied on a per share basis for orders that provide and remove liquidity, respectively. In response to this competitive environment, the Exchange offers tiered pricing that provides ETP Holders opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for ETP Holders to strive for higher tier levels, which provides increasingly higher discounts for satisfying more stringent criteria.

More specifically, the Exchange currently has multiple levels of credits designed to incentivize ETP Holders to achieve certain levels of participation on both the Exchange's equities and options platform (''NYSE Arca Options''). Under Cross-Asset Tier 1 and Cross-Asset Tier 3, ETP Holders can currently receive a credit of $0.0030 per share for orders that provide liquidity, *i.e.,* resting limit orders available for execution on the Exchange, in Tapes A,

[3] 17 CFR 240.19b–4.

[4] All references to ETP Holders in connection with Cross-Asset Tier 3 include Market Makers.

[5] To qualify for credits under Cross-Asset Tier 3, ETP Holders are required to (a) provide liquidity of 0.30% or more of the US CADV per month, and (b) have an affiliation with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.80% of total Customer equity and ETF option ADV as reported by OCC, of which at least 0.20% of total Customer equity and ETF option ADV as reported by OCC is from Customer and Professional Customer executions in non-Penny Pilot issues on NYSE Arca Options. *See* Fee Schedule, Cross-Asset Tier 3. US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[7] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[8] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[10] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[11] *See id.*

B and C Securities.[12] Additionally, under Cross-Asset Tier 2, ETP Holders can currently receive the following credits for orders that provide liquidity: $0.0031 per share in Tape A Securities; $0.0030 per share in Tape B Securities; and $0.0032 per share in Tape C Securities.[13]

Proposed Fee Change for Cross-Asset Tier 3

The Exchange proposes to provide an increased incentive for ETP Holders that otherwise qualify for the current Cross-Asset Tier 3 to send liquidity-providing orders to the Exchange in Tapes A, B and C Securities. As proposed, if an ETP Holder (including Market Makers) meets the requirements of Cross-Asset Tier 3 and, for the billing month, executes orders that provide liquidity in Tapes A, B and C Securities that is at least 0.65% of US CADV, that ETP Holder would be eligible for an incremental credit of $0.0002 per share for orders that provide liquidity to the Book in Tapes A and B Securities.

For example, assume an ETP Holder meets the options requirement of Cross-Asset Tier 3 by having an affiliation with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.80% of total Customer equity and ETF option ADV as reported by OCC, of which at least 0.20% of total Customer equity and ETF option ADV as reported by OCC is from Customer and Professional Customer executions in non-Penny Pilot issues on NYSE Arca Options. Further assume that ETP Holder provides liquidity of 24.5 million shares in a month where US CADV is 7.0 billion shares, or 0.35% of US CADV, thereby meeting the current requirements and qualifying for the Cross-Asset Tier 3 credit of $0.0030 per share. If that ETP Holder instead provides liquidity of at least 45.5 million shares, or 0.65% of US CADV, that ETP Holder would be eligible for the proposed incremental credit of $0.0002 per share for orders that provide liquidity to the Book in Tapes A and B Securities, for a combined credit of $0.0032 per share.

Applicability of Proposed Rule Change

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an additional opportunity to receive an enhanced rebate by executing more of their orders on the Exchange.

The Exchange proposes to increase the credits available under the Cross-Asset Tier 3 pricing tier to provide an incentive for ETP Holders to send increased order flow to qualify for these tiers. If an ETP Holder qualifies for Cross-Asset Tier 3 and meets the additional proposed volume requirement, that ETP Holder would be eligible for an incremental credit as compared to the current credit for qualifying for Cross-Asset Tier 3, which is $0.0030 per share credit for orders that provide liquidity in Tapes A, B and C Securities.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. There are currently no firms that qualify for the credits under the current Cross-Asset Tier 1 pricing tier. There is currently one firm that qualifies for the credits under the current Cross-Asset Tier 2 pricing tier and one firm that qualifies for the credits under the current Cross-Asset Tier 3 pricing tier.[14] However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for the incremental credit. The Exchange believes the proposed increased credit for Cross-Asset Tier 3 would provide an incentive for ETP Holders to submit additional liquidity-providing orders to the Exchange to qualify for the incremental credit.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable, providing liquidity that would be displayed on the Exchange. The proposed rule change is designed to incentivize ETP Holders to increase the orders sent to the Exchange that would provide liquidity, which would support the quality of price discovery and transparency on the Exchange. The Exchange believes that by correlating the level of the credit to the level of executed providing volume on the Exchange, the Exchange's fee structure would incentivize ETP Holders to submit more displayed, liquidity-providing orders to the Exchange that are likely to be executed (*i.e.,* are not orders that are intended to be displayed, but are priced such that they are not likely to be executed), thereby increasing the potential for incoming marketable orders submitted to the Exchange to receive an execution.

With respect to the proposed new incremental credit under Cross-Asset Tier 3 for orders that provide liquidity, while there is currently one ETP Holder that qualifies for Cross-Asset Tier 3, the Exchange believes that at least three other ETP Holders could qualify for the proposed new incremental credit if these firms were to direct more of their eligible order flow to the Exchange such that these firms would then meet both the existing Cross-Asset Tier 3 requirements and the proposed new volume requirement.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.'' [17]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented

[12] *See* Fee Schedule, Cross-Asset Tier 1 and Cross-Asset Tier 3. Additionally, under Cross-Asset Tier 3, ETP Holders can also receive an incremental credit of $0.0004 per share in Tape C Securities if they meet the current requirements of Cross-Asset Tier 3 and execute a designated percentage of volume of its Tape C CADV.

[13] *See* Fee Schedule, Cross-Asset Tier 2.

[14] As of July 24, 2019, there are 165 ETP Holders on the Exchange, of which 57 are affiliated with an OTP Holder or OTP Firm and could therefore, qualify for the Exchange's Cross-Asset pricing tiers.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

[17] *See* Regulation NMS, 70 FR at 37499.

and competitive.'' [18] Indeed, equity trading is currently dispersed across 13 exchanges,[19] 31 alternative trading systems,[20] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[21] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, as noted earlier, the Exchange averaged less than 9% market share of executed volume of equity trades (excluding auction volume) for June 2019. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces reasonably constrain exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed increased credit is reasonable as it would provide an additional incentive for ETP Holders to qualify for the new incremental credit and direct their order flow to the Exchange and provide meaningful added levels of liquidity, thereby contributing to the depth and market quality on the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to continue to provide a higher credit for orders that provide liquidity if an ETP Holder meets the heightened volume requirements to qualify for the new incremental credit.

Because the proposed amendment to the Cross-Asset Tier 3 pricing tier would be new with a requirement to increase liquidity providing orders, no ETP Holder currently qualifies for the proposed new incremental credit.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[22] including the Exchange,[23] and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

As noted previously, there are a small number of firms that currently qualify or could qualify for the credits under the current Cross-Asset Tier 1, Cross-Asset Tier 2, and Cross-Asset Tier 3 pricing tiers and if these firms were to submit more of their liquidity-providing orders to the Exchange, each could qualify for the proposed new incremental credit. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for the new incremental credit. The Exchange believes the proposed incremental credit would provide an incentive for ETP Holders to submit additional adding liquidity to qualify for the additional credit.

The Exchange believes that the proposed new credit for liquidity providing orders in Tapes A, B and C Securities under the current Cross-Asset Tier 3 pricing tier is reasonable because it provides an incentive for ETP Holders to route additional liquidity-providing order flow to the Exchange, which would promote price discovery and increase execution opportunities for all ETP Holders. The proposed pricing is structured similarly to the incremental credit the Exchange currently provides under current Cross-Asset Tier 3, which likewise provides ETP Holders an incremental credit of $0.0004 per share (above the tiered rate of $0.0030 per share) if the ETP Holder meets the qualifying requirements.[24] The Exchange believes that the proposed change to the Cross-Asset Tier 3 pricing tier is reasonable because an ETP Holder that otherwise qualifies for the tier would still be eligible for the current per share credit of $0.0030 per share for orders that provide liquidity. The proposed additional credit is designed to provide an incentive for such ETP Holder to route additional providing liquidity to the Exchange, which would be eligible for the higher credit.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposed Fee Change is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The Exchange believes that the proposed increased credit under the Cross-Asset Tier 3 pricing tier is equitable because the magnitude of the additional credit is not unreasonably high in comparison to the credit paid with respect to other pricing tiers on the Exchange, and in comparison to the credits paid by other exchanges for orders that provide liquidity. For example, ETP Holders currently receive credits in Tape A, Tape B and Tape C Securities that range between $0.0022 per share and $0.0034 per share under Step Up Tier, Step Up Tier 2, Step Up Tier 3 and Step Up Tier 4.

With respect to credits paid by the Exchange's competitors, BZX provides a credit that ranges between $0.0028 and $0.0030 per share in Tape A, Tape B and Tape C Securities under that market's Cross-Asset pricing tiers.[25]

The Exchange believes that the proposed new incremental credit for liquidity providing orders in Tapes A, B and C Securities under current Cross-Asset Tier 3 is also equitable because the proposal would continue to encourage ETP Holders to route liquidity-providing orders to the Exchange in Tapes A, B and C Securities, thereby contributing to robust levels of liquidity, which benefits all market participants.

As noted above, there are a small number of firms that currently qualify or could qualify for the credits under the current Cross-Asset Tier 1, Cross-Asset Tier 2, and Cross-Asset Tier 3 pricing tiers and if these firms were to submit

[18] *See* Transaction Fee Pilot, 84 FR at 5253.

[19] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[20] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[21] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[22] *See e.g.,* Cboe BZX U.S. Equities Exchange (''BZX'') Fee Schedule, Footnote 1, Add Volume Tiers which provide enhanced rebates between $0.0025 and $0.0032 per share for displayed orders where BZX members meet certain volume thresholds.

[23] *See e.g.,* Fee Schedule, Step Up Tier, Step Up Tier 2, Step Up Tier 3 and Step Up Tier 4, which provide enhanced rebates between $0.0025 and $0.0033 per share in Tape A Securities, between $0.0022 and $0.0034 per share in Tape B Securities, and between $0.0025 and $0.0033 per share in Tape C Securities for orders that provide displayed liquidity where ETP Holders meet certain volume thresholds.

[24] *See* Fee Schedule, Cross-Asset Tier 3. *See also* Securities and Exchange Act Release No. 80920 (June 14, 2017), 82 FR 28106 (June 20, 2017) (SR–NYSEArca–2017–64).

[25] *See* Cross-Asset Add Volume Tier 1–4, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

more of their liquidity-providing orders to the Exchange, each could qualify for the proposed new incremental credit. However, without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange believes the proposed new incremental credit would provide an incentive for market participants to increase liquidity in order to qualify for the proposed new incremental credit, thereby encouraging submission of additional liquidity to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. ETP Holders that currently qualify for credits associated with Cross-Asset pricing tiers on the Exchange will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange for the benefit of investors generally. As to those market participants that do not presently qualify for the credits associated with Cross-Asset Tier 3, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposed Fee Change is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to provide an incremental per share credit as the proposed increased credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the increased volume requirements under the Cross-Asset Tier 3 pricing tier. Further, the Exchange believes the proposed incremental per share credit would incentivize ETP Holders that meet the current Cross-Asset Tier 3 pricing tier requirements to execute more of their liquidity-providers orders on the Exchange to qualify for the proposed incremental credit. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed incremental per share credit would apply equally to all ETP Holders as each would be required to execute providing volume in Tapes A, B and C Securities during the billing month equal to at least 0.65% of US CADV regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Similarly, the Exchange believes it is not unfairly discriminatory to provide an incremental credit for liquidity providing orders in Tapes A and B Securities under the current Cross-Asset Tier 3 pricing tier because the proposed credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the proposed new volume requirements. Further, the Exchange believes the proposed incremental credit would incentivize ETP Holders to send more orders to the Exchange to qualify for the higher credit.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[26] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed rule change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [27]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed incremental credit would continue to incentivize market participants to direct and execute more orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed incremental credit would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) declined from March 2019 to June 2019. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[26] 15 U.S.C. 78f(b)(8).

[27] Regulation NMS, 70 FR at 37498–99.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [28] of the Act and subparagraph (f)(2) of Rule 19b–4 [29] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [30] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–56. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–56, and should be submitted on or before September 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17491 Filed 8–14–19; 8:45 am]

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[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(2).

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86626; File No. SR–IEX–2019–07]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the IEX Fee Schedule, Pursuant to IEX Rules 15.110(a) and (c), To Charge a Fee of $100 Per Month for Each Logical Order Entry Port in Excess of Five Per User

August 9, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 8, 2019, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to charge a fee of $100 per month for each logical order entry port (''Order Entry Ports'') [6] in excess of five per User.[7] As described below, although changes to the Fee Schedule pursuant to this proposal are effective upon filing, IEX is choosing to defer implementation of the proposed fee until October 1, 2019 to provide an opportunity for IEX to receive and consider any comments before the fee is assessed, as well as an opportunity for Users to reduce the number of their assigned Order Entry Ports and corresponding fees before the fee is applicable.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX has not previously imposed any fees for Order Entry Ports used to access its market. In general, IEX believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] Order Entry Ports are used for sending and receiving order messages.

[7] *See* Rule 1.160(qq).

members and markets. IEX believes this high standard is especially important when an exchange imposes fees for its own market data or for connectivity to the exchange, because it believes each exchange has a natural monopoly over its own market data (specifically depth of book and direct access to top of book) and access to its own market. Therefore, IEX believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs and that it is not taking advantage of its unique position as an exchange that many market participants must be able to access.

For the same reasons, IEX is also choosing to defer implementation of the proposed fee to October 1, 2019 in order to provide an opportunity for industry comment and to take into consideration any such comments before beginning to charge the fee. Under the existing regulatory regime, exchange fee changes ''shall take effect upon filing with the Commission.'' [8] While the proposed fee is being filed under this provision, IEX believes that proposals to raise fees for market data and connectivity should be exposed to public notice and comment before they are implemented. Consistent with this view, IEX is voluntarily delaying implementation of the proposed fee so that market participants have a reasonable opportunity to assess whether it is fair and reasonable and meets the other standards of the Exchange Act and to provide written comments, if they wish, before any Users of IEX are charged the new fee.[9] Additionally, delayed implementation will provide an opportunity for Users to disconnect any of their assigned Order Entry Ports, if they choose to do so, thereby reducing the fee to be charged, before the first month in which IEX will charge for assigned Order Entry Ports in excess of five.

In proposing to charge fees for Order Entry Port connectivity, IEX has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members [10]—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. IEX believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[11] and Rule 19b–4 thereunder,[12] with respect to the types of information self-regulatory organizations (''SROs'') should provide in seeking approval of any fee changes, and Section 6(b) of the Act,[13] which requires, among other things, that exchange fees be reasonable and equitably allocated,[14] not designed to permit unfair discrimination,[15] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[16] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[17]

As noted above, IEX currently does not charge fees for connectivity to the Exchange, including fees for logical connectivity for order entry purposes. The objective of this approach was to eliminate any fee-based barriers to connectivity for Members when IEX launched as a national securities exchange in 2016, and it was successful in achieving this objective in that a large portion of Members are directly connected to IEX. As detailed below, IEX recently calculated its annual aggregate costs for providing connectivity to the Exchange at $1,508,649. Because IEX has to date offered logical port connections free of charge, IEX has borne 100% of all connectivity costs. In order to recover a portion of the aggregate costs of providing connectivity to its Users (both Members and Service Bureaus, [18]) the Exchange is proposing to modify its Fee Schedule, pursuant to IEX Rules 15.110(a) and (c), to charge a fee of $100 per month for each Order Entry Port in excess of five per User.[19] The proposed fees would not apply to logical ports used for other purposes, such as receiving market data or drop copies,[20] nor would such ports count toward the five free Order Entry Port calculation. Furthermore, IEX would not charge any fee for Users to connect to IEX's Disaster Recovery Facility or Test Facility, for the reasons explained below.[21]

Similar to other exchanges, IEX offers its Members logical connectivity ports, also known as ''sessions,'' for order entry and receipt of trade execution reports and order messages.[22] Members can also choose to connect to IEX indirectly through a session maintained by a third-party Service Bureau. Service bureau sessions may provide access to one or multiple Members on a single session. Users of IEX services (both Members and Service Bureaus) (''Users'') seeking to establish one or more sessions with IEX submit an Equities Port Request Form to IEX.[23] Upon receipt of the completed paperwork, IEX assigns the User the number of sessions requested by the

[8] *See* Section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii).

[9] Although fee filings are effective upon filing with the Commission, such filings are subject to a 21-day comment period following filing. Further, 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. See 15 U.S.C. 78s(b)(3)(C). Therefore, any comments submitted about this fee filing within this time frame can inform any decision by the Commission as to whether to suspend the rule change.

[10] *See* Rule 1.160(s).

[11] 15 U.S.C. 78s(b)(1).

[12] 17 CFR 240.19b–4.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

[17] The Commission staff recently published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Guidance''). While IEX understands that the Guidance does not create new legal obligations on SROs, the Guidance is consistent with IEX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[18] Service Bureaus, which offer technology-based services to other companies for a fee, may access the Exchange's Order Entry Ports on behalf of one or more Members. *See* Rule 11.130(d).

[19] Users who connect to the Exchange's Order Entry Ports are either Members that connect directly to Exchange, or Service Bureaus through which one or more Members connect to the Exchange. Because it is the Exchange's Members that send orders to the Exchange (either directly or through a Service Bureau), this rule filing focuses on the expected impact on Members. However, because IEX assigns Order Entry Ports to Users, which includes Service Bureaus that provide connectivity to Members, the impact of the proposed fee on Service Bureaus will be addressed whenever relevant.

[20] Confirmations of orders and execution reports are transmitted by the Exchange over the Order Entry Port that was used to enter the order. A ''drop copy'' contains redundant information that a Member chooses to have ''dropped'' to another destination (*e.g.,* to allow the Member's back office and/or compliance department, or another Member—typically the Member's clearing broker—to have immediate access to the information). Drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders.

[21] Logical ports to connect to the Disaster Recovery or Test Facilities also would not count toward the five free Order Entry Port calculation.

[22] Logical connectivity for order entry is provided via network switch and cabling infrastructure that delivers order and execution messages, as well as server infrastructure that runs software processes responsible for validating and formatting such messages for either internal or external consumption.

[23] *See* the Equities Port Request Form and Service Bureau Authorization at *https://iextrading.com/docs/IEX%20Connectivity%20Agreements%20and%20Forms.pdf* Members may also send orders to IEX as a sponsored participant of another Member, pursuant to Rule 11.130.

User. The number of sessions assigned to each User as of May 31, 2019 ranges from one to more than 100, depending on the scope and scale of the Member's trading activity on IEX (either through a direct connection or through a Service Bureau) as determined by the Member. For example, by using multiple sessions, Members can segregate order flow from different internal desks, business lines, or customers. IEX does not impose any minimum or maximum requirements for how many Order Entry Ports a Member or Service Bureau can maintain, and it is not proposing to impose any minimum or maximum session requirements for its Members or their Service Bureaus.

In January 2019, IEX conducted a study of its aggregate costs to produce market data and connectivity (the ''Cost Study'').[24] The Cost Study includes a detailed analysis of IEX's aggregate baseline costs, including the methodology it used for determining such costs for three separate segments—market data, physical connectivity (the physical connections required to access IEX in its data center), and logical connectivity, which concerns the cost to offer and maintain Order Entry Ports. The Cost Study estimated that IEX's aggregate annual cost to provide Order Entry Ports in 2018 was $1,508,976, or $83.17 per Order Entry Port per month.[25] IEX currently does not charge fees for Order Entry Ports and therefore generates no revenue in connection with such ports.

The following chart, from the Cost Study, details the individual annual line item costs considered by IEX to be directly related to offering logical connectivity. The servers, switches, and software licenses included were limited to those specifically dedicated to order entry access. ''Monitoring'' includes hardware and software licenses used to monitor these physical assets and the health of the order entry services provided by the Exchange. All physical assets and software, which also includes assets used for testing (''ITF Order Entry'') and monitoring of order entry infrastructure, were valued at cost, depreciated over three years. For personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining logical connectivity, and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401(k) matching contributions. The total annual cost of $1,508,976 was divided by the number of available Order Entry Ports, or sessions, to arrive at an annual cost of $998, or approximately $83 per month, per port.[26]

TABLE 1

Annual IEX Order Entry Infrastructure	($1,616,409)[27]
Order Entry Distribution Switches (2 x 52 port)	($16,667)
Order Entry Access Layer Switches (6 x 24 port)	($40,000)
Client Gateway & Drop Copy Servers (CLGW/DCGW) (84/6)	($165,000)
a. Software Licensing	($48,000)
Sequencing Access Layer Switches (6 x 24 port)	($50,000)
ITF Order Entry	($95,333)
Space, Power, Security	($14,560)
Administrative Access	($33,333)
Monitoring	($320,567)
Personnel	($832,949)
Max Order Entry Sessions (Logical Sessions)	1,512
Max Drop Copy Sessions (Logical Sessions)	108
Annual Cost per Order Entry Session	($998)
Annual Cost per Drop Copy Session	($998)

In order to recoup a portion of its aggregate costs in providing Order Entry Ports, IEX is proposing to charge a fee of $100 per month for each Order Entry Port above five such ports per User. IEX proposes to provide five free Order Entry Ports in order to minimize barriers to entry for Members and incentivize liquidity on the Exchange. IEX's business model seeks to generate revenue from trading rather than from data and connectivity fees, so an essential part of the proposed fee structure is to enable all Members to be able to connect to the Exchange at no cost. As described in more detail below, based on Order Entry Port connectivity as of May 31, 2019, over 75% of Members with connectivity use fewer than five Order Entry Ports and therefore will not be subject to any corresponding port fees. In determining the appropriate number of Order Entry Ports to provide for free, IEX considered several factors. First, IEX recognizes that each User needs at least two Order Entry Ports for redundancy purposes. Second, while there is no ''exact science'' to the determination, from a review of the number of Order Entry Ports currently requested and assigned to each User, IEX believes that five such ports appear to be sufficient for a majority of its Users. On that basis, IEX chose five Order Entry Ports as a base level of free connectivity. Some Members will use many more Order Entry Ports than other Members (and the five provided for free), depending on the nature and volume of the business they conduct on IEX and the choices they make in segmenting that business among different Order Entry Ports. Allowing for this additional use of Exchange capacity represents an aggregate cost that IEX seeks to recover in part.

The proposed change is also designed to encourage Users to be efficient with their Order Entry Port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing Order Entry Ports. As discussed below, approximately 25% of the Order Entry Ports maintained by Members were not used to send orders to IEX during May 2019. There is no requirement that any Member maintain a specific number of Order Entry Ports and a Member may choose to maintain as many or as few of such ports as each Member deems appropriate.

Finally, the fee will help to encourage Order Entry Port usage in a way that aligns with IEX's regulatory obligations. As a national securities exchange, IEX is subject to Regulation Systems Compliance and Integrity (''Reg SCI'').[28] Reg SCI Rule 1001(a) requires that IEX establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain IEX's operational capability and promote the maintenance of fair and orderly markets.[29] By encouraging Users to be efficient with their Order Entry Port usage, the proposed fee will support IEX's Reg SCI obligations in this regard by ensuring that unused Order Entry Ports are available to be allocated based on individual User needs and as IEX's overall order and trade volumes increase.[30] Additionally, because IEX will continue not to charge for connections to its Disaster Recovery Facility or its Test Facility, the proposed fee structure will further support IEX's Reg SCI compliance by reducing the potential impact of a disruption should

[24] *See* ''The Cost of Exchange Services—Disclosing the Cost of Offering Market Data and Connectivity as a National Securities Exchange'' (January 2019) available at *https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf.*

[25] *Id* at 30.

[26] As reflected in Table 1, the Cost Study estimated that IEX's total annual order entry infrastructure costs are $1,616,409, which includes a cost of $107,761 to provide 108 drop copy ports. However, IEX is not proposing to charge for drop copy ports, and therefore subtracted those costs ($107,761) from the annual order entry infrastructure costs, which results in the total estimated annual cost for providing Order Entry Ports of $1,508,976. *See Id.* at 28–31.

[27] *Id.*

[28] 17 CFR 242.1000–1007.

[29] 17 CFR 242.1001(a).

[30] In the past year, IEX has seen a 10.8% increase in the number of active use sessions.

IEX be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing without incurring any port fee costs.[31]

As proposed, Order Entry Port fees will apply based on the User that maintains the Order Entry Port. If that User is a Member, the Member will not be subject to a fee for the first five Order Entry Ports and will be assessed a $100 monthly fee for each assigned Order Entry Port in excess of five. If that User is a Service Bureau, the Service Bureau likewise will not be subject to a fee for the first five Order Entry Ports and will be assessed a $100 monthly fee for each Order Entry Port assigned in excess of five. Depending on the contractual terms in place, Service Bureaus may pass on such port fees to their client Members.[32]

As of May 31, 2019, 136 Members have assigned Order Entry Ports (either directly or through a Service Bureau), with the number of assigned Order Entry Ports ranging from one to 139 per Member. The number of assigned Order Entry Ports is highly concentrated among a few Members. Close to 50% of all Order Entry Ports are assigned to seven Members. Of the Order Entry Ports assigned to those seven Members, three are assigned over 32% of the Order Entry Ports, and two are assigned close to 25%. More than 75% of IEX's Members (103 of 136) with logical port connectivity to the Exchange will not be subject to any Order Entry Port fees under the proposed fee based on current usage, because they are assigned five or fewer Order Entry Ports (either directly or through a Service Bureau).

Requests for (and assignment of) Order Entry Ports have increased since IEX launched as an exchange in 2016 and as IEX's order and trade volume have increased. In addition, some Users request and are assigned more Order Entry Ports than they use. For example, during May 2019, 100 Members did not send orders through one or more assigned Order Entry Ports, representing approximately 25% of all assigned Order Entry Ports.

Based on May 2019 data, IEX projects that 33 Members will be subject to Order Entry Port fees, assuming no changes in the number of assigned Order Entry Ports. The following chart provides data on projected monthly fees based on current Order Entry Port usage and a separate projection assuming Members eliminate all currently unused assigned Order Entry Ports following the implementation of the fee:[33]

TABLE 2[34]

Fee range	All currently assigned ports		Eliminating unused assigned ports	
	# Members	Estimated average monthly fees ($)	# Members	Estimated average monthly fees ($)
No Fee	103		109	
Under $500	10	2,800	9	$1,700
$500–$999	6	4,500	4	2,900
$1,000–$2,499	7	12,700	7	10,400
$2,500–$4,999	6	18,300	3	8,300
$5,000+	4	38,900	4	31,900
Totals	136	77,200	136	56,200

Depending on the number of unused Order Entry Ports that are retained following implementation of the proposed fee change, IEX projects that between 103 and 109 Members will not be subject to any Order Entry Port fees and between 27 and 33 Members will be subject to the Order Entry Port fee, with most of those Members (between 20 and 23) paying less than $2,500 per month for their logical port connections. Between seven and ten Members are projected to be subject to a monthly charge of more than $2,500. Only four Members will be potentially subject to a monthly charge in excess of $5,000. As described in more detail below, the proposed fee is projected to partially recover IEX's aggregate costs of providing logical Order Entry Ports to Users. The anticipated annual deficit (*i.e.,* the difference between aggregate costs and fee revenue) is projected to be between $546,249 and $805,449.[35]

The proposed fee will not apply differently based upon the size or type of the market participant, but rather based upon the number of Order Entry Ports a User requests, based upon factors deemed relevant by each User (either a Member or Service Bureau). IEX believes these factors include the costs to maintain connectivity, the volume of incoming messages sent to

[31] By comparison, some other exchanges charge less to connect to their disaster recovery facilities, but still charge an amount that could both recoup costs and potentially be a source of profits. *See, e.g.,* Nasdaq Stock Market LLC Equity 7, Section 115 (Ports and other Services).

[32] A total of 76 Members connect to IEX through an Order Entry Port assigned to a Service Bureau, but only two Service Bureaus currently maintain more than five Order Entry Ports, thereby subjecting them to a fee for some of these ports.

[33] As discussed below, upon implementation of the new fee, IEX expects some Members to reduce their unused assigned Order Entry Ports, which would lead to a commensurate drop in the Order Entry Port fees incurred by those Members.

[34] All four tables focus on the number of Order Entry Ports assigned to Members, and do not include any of the Service Bureaus. As discussed in note 32, above, under the proposed fee, two Service Bureaus currently maintain more than five ports each, and would therefore be charged for those Order Entry Ports in excess of five. Specifically, these two Service Bureaus will collectively be charged $3,000 per month based on their current Order Entry Port usage ($2,400 per month if the Service Bureaus disconnect their unused sessions). Those two Service Bureaus may pass the Order Entry Port fees on to their Members, depending on the contractual relationship between the parties. Although these Service Bureaus are not included in the four tables, the projected revenue from the Service Bureaus is included in any calculations of total projected revenues from this fee filing.

[35] These numbers are calculated as follows: IEX calculates its annual aggregate cost for providing Order Entry Ports as $1,508,649. Based on current Order Entry Port usage, on an annual basis, IEX will collect $926,400 from its Members, and, as described in footnote 34, above, $36,000 from two Service Bureaus (totaling $962,400). Should the Members and Service Bureaus drop all unused Order Entry Ports, on an annual basis, IEX will collect $674,400 from its Members and $28,800 from two Service Bureaus (totaling $703,200). Finally, IEX subtracted the two projected annual fee revenue totals from the total calculated cost of providing Order Entry Ports.

IEX, and choices Members make in how to segment or allocate their order flow.[36]

IEX assessed whether the fee may impact different types or sizes of Members differently. As a threshold matter, and as discussed above, the fee does not by design apply differently to different types or sizes of Members. Nonetheless, IEX assessed whether there would be any differences in the amount of the projected fee that correlate to the type and/or size of different Members. This assessment revealed that the number of assigned Order Entry Ports, and thus projected fees, correlates closely to a Member's inbound message volume to IEX. Specifically, as inbound message volume increases per Member, the number of requested and assigned Order Entry Ports increases. Table 3, below, presents data from May 2019 evidencing the correlation between a Member's inbound message volume and the projected fee, based on the number of Order Entry Ports assigned to the Member as of May 31, 2019. Members with relatively higher inbound message volume are projected to pay higher fees because they have requested more Order Entry Ports. For example, the four Members that are projected to be subject to monthly fees of $5,000 or more on average account for 9.6% of May inbound messages (38.4% in the aggregate) and would pay 50.4% of the total amount paid for Order Entry Port fees. In contrast, the 103 Members that, based on their May 2019 Order Entry Port usage are not projected to be subject to any Order Entry Port fees, on average account for only 0.2% of May inbound messages and would pay 0% of the total amount paid for Order Entry Port fees.

As discussed in more detail in the Statutory Basis section, IEX believes that the variance between projected fees and Order Entry Port usage is not unfairly discriminatory because it is based on objective differences in Order Entry Port usage among different Members. IEX notes that the distribution of total inbound message volume is concentrated in relatively few Members, which consume a much larger proportionate share of the Exchange's resources (compared to the majority of Members that send substantially fewer inbound order messages). This distribution of inbound message volume requires IEX to maintain sufficient Order Entry Port capacity to accommodate the higher existing and anticipated message volume of higher volume Members. Thus, IEX's incremental aggregate costs for all Order Entry Ports are disproportionately related to volume from the highest inbound message volume Members. For these reasons, IEX believes it is not unfairly discriminatory for the Members with the highest inbound message volume to pay a higher share of the total Order Entry Port fees.

In this regard, IEX notes that it is not possible to fully synchronize its objective to provide five free Order Entry Ports to all Members, thereby minimizing barriers to entry and encouraging liquidity on the Exchange, with an approach that exactly aligns the projected per Member fee with each Member's number of requested Order Entry Ports. IEX believes that the low amount of the proposed fee substantially mitigates any disparate impact.

TABLE 3

Fee range	All currently assigned ports			
	# Members	Estimated average monthly fees ($)	% of total fees charged (aggregate)	Average % of inbound messages per member
No Fee	103	.....	0.0	.24
Under $500	10	2,800	3.6	.37
$500–$999	6	4,500	5.8	1.56
$1,000–$2,499	7	12,700	16.5	1.39
$2,500–$4,999	6	18,300	23.7	2.41
$5,000+	4	38,900	50.4	9.61

While Members with a business model that results in higher relative inbound message activity are projected to pay higher fees, the level of such fees is based solely on the number of Order Entry Ports deemed necessary by the Member and not on the Member's business model or type of Member. IEX notes that the correlation between percent of message volume and projected Order Entry Port fees is not completely aligned for two main reasons. First, every Member will receive up to five free Order Entry Ports, and those ports become a decreasing percentage of a Member's total Order Entry Ports as the number of such ports increases. Second, Members individually determine how many Order Entry Ports to request, and Members may make different decisions on the appropriate message to Order Entry Port ratio based on facts unique to their individual businesses.

IEX also considered whether there are any differences in the number of Order Entry Ports requested/assigned based on the liquidity ''take'' versus ''provide'' ratio[37] of a Member's executed orders. The results are summarized in Table 4 below. This analysis identified some variation among Members at different projected fee levels, but not any differences that are indicative of a disparate impact. The four Members that are projected to incur a monthly charge in excess of $5,000 had a slightly lower ''provide'' percentage of 42%, compared to Members not projected to be subject to any charge, which had a ''provide'' percentage of 55%. Overall, however, Members at all projected fee levels include significant amounts of taking and providing executed orders. Thus, IEX does not believe that these differences reflect any material connection between projected Order Entry Port fees and the take versus provide ratio.

[36] IEX understands that some Members (or Service Bureaus) may also request more Order Entry Ports to enable the ability to send a greater number of simultaneous order messages to IEX by spreading orders over more Order Entry Ports, thereby increasing throughput (*i.e.,* the potential for more orders to be processed in the same amount of time). The degree to which this usage of Order Entry Ports provides any throughput advantage is based on how a particular Member sends order messages to IEX. However, it is important to note that all Order Entry Ports on IEX provide the same throughput.

[37] An order that takes liquidity executes against orders resting on IEX's order book. An order that provides liquidity is executed after resting on IEX's order book.

TABLE 4

Fee range	All currently assigned ports		% of trades that provide liquidity
	# Members	Estimated average monthly fees ($)	
No Fee	103		55
Under $500	10	2,800	44
$500–$999	6	4,500	50
$1,000–$2,499	7	12,700	49
$2,500–$4,999	6	18,300	55
$5,000+	4	38,900	42

Consequently, the Exchange believes that this data supports its view that the proposed fee will be fairly allocated among IEX Members based on their usage of Order Entry Ports.

The proposed fee is effective on filing and will become operative on October 1, 2019.[38]

The Exchange is not proposing to assess any other fees for connectivity, market data, or membership, each of which is currently provided without charge.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)[39] of the Act in general and furthers the objectives of Section 6(b)(4)[40] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also believes that the proposed fee change promotes just and equitable principles of trade and will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5)[41] of the Act.

Reasonableness

With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the proposal was subject to significant competitive forces in setting the terms of the proposal. In looking at this question, the Commission considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supracompetitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Commission will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. If the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

IEX has not previously charged Order Entry Port fees, so it does not have IEX-specific data to support whether or not competitive forces would constrain its ability to set fees for Order Entry Ports. However, IEX notes that Order Entry Port fees at competing exchanges have steadily risen over the last few years,[42] compared to the pattern of changes in transaction fees,[43] which IEX believes demonstrates that competition does not constrain connectivity fees. As noted in the Cost Study, the six largest equities exchanges by market share[44] all charge between $550 and $575 per month to connect to each Order Entry Port.[45] As also noted in the Cost Study, the extreme differences between IEX's aggregate cost to produce market data, physical connectivity, and logical connectivity products and the prices charged by other exchanges for similar products and services clearly suggests that the pricing for all of these classes of products is not constrained by competition.[46] Furthermore, IEX notes that, as with the market for other exchanges' Order Entry Ports, there is no reasonable substitute for an IEX Order Entry Port to send orders to IEX. Members (and Service Bureaus) could choose not to transact on IEX and send orders to competing venues instead, but their orders may not receive the same execution quality and other protections that IEX is designed to provide. Members may also need connectivity to IEX, as with other exchanges, in order to meet best execution[47] and order protection[48] regulatory requirements. With respect to the Order Protection Rule, connectivity to IEX enables a Member to access a protected quotation on IEX in compliance with the rule. A Member (or Service Bureau) could choose to send orders through another Member of IEX as agent or through a Service Bureau, in lieu of connecting directly to IEX. However, in such circumstances IEX expects that the Member (or Service Bureau), subject to any IEX applicable fees, would be subject to charges related to IEX connection fees either directly (via a pass through) or indirectly (via charges that reflect the cost of IEX connection fees). More important, connecting indirectly would add latency that would

[38] Monthly fees will be assessed based on the number of Order Entry Ports assigned to each User as of the first of each month.

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(4).

[41] 15 U.S.C. 78f(b)(5).

[42] As an example of the steady increase in Order Entry Port fees charged by other exchanges, in 2012 NYSE raised its monthly Order Entry Port fees from $150 to $200 per month, and three years later, raised the monthly Order Entry Port fees from $200 to $550. *See* Securities Exchange Act Release No. 68229 (November 14, 2012), 77 FR 69688 (November 20, 2012) (SR–NYSE–2012–60) and Securities Exchange Act Release No. 76072 (October 5, 2015), 80 FR 61258 (October 9, 2015) (SR–NYSE–2015–43).

[43] With respect to transaction fees, other exchanges often lower their fees or increase their rebate amounts, thereby lowering their overall transaction fees. *See, e.g.,* Securities Exchange Act Release No. 85636 (April 17, 2019), 84 FR 16062 (April 12, 2019) (SR-CboeBZX–2019–021) (creating a new volume tier that further reduced the fees charged at the pre-existing volume tier) and Securities Exchange Act Release No. 85373 (March 20, 2019), 84 FR 11379 (March 26, 2019) (SR–NASDAQ–2019–015) (offering an additional $.00005 per share rebate for displayed quotes/orders that provide liquidity).

[44] The market share of equities exchanges is calculated from January 1, 2019 to May 31, 2019, based on IEX market data.

[45] *See* Cost Study, footnote 24 at 27.

[46] *See* Cost Study, footnote 24 at 18–19, 24–25, and 31–32, respectively.

[47] FINRA Rule 5310.

[48] 17 CFR 242.611 (''Order Protection Rule'').

make this alternative impractical as a competitive matter for many firms that, by virtue of their business, require the fastest available access to the markets on which they trade. Accordingly, IEX does not assert that this approach constitutes a reasonable substitute to connecting directly to IEX's Order Entry Ports.

Further, IEX is not aware of and does not believe that there is any evidentiary support for the proposition that competition at the ''platform level'' constrains market data and connectivity fees in general, including logical connectivity fees of the type proposed in this filing.

Thus, IEX believes that in the current market structure, the market for connectivity to IEX and other exchanges is not subject to significant competitive forces sufficient to ensure the reasonableness of Order Entry Port fees, and IEX is not relying on an argument that the fees proposed in this filing are justified based on market competition.

Instead, IEX believes the proposed fee is fair and reasonable as a form of partial cost recovery for IEX's aggregate costs of offering logical ports to its Members and Service Bureaus.[49] The proposed fees are expected to generate annual revenue of between $703,200 and $962,400,[50] providing a partial cost recovery to IEX for the aggregate costs of offering logical port connections, based on a methodology that narrowly limits the aggregate cost elements considered to those closely and directly related to the particular product offering. Thus, based on IEX's conservative cost methodology and accounting for the costs of maintaining excess Order Entry Port capacity, the proposed fees are projected to yield at most 63.8% of the annual aggregate costs of offering the related product ($962,400 divided by $1,508,649). While IEX believes that exchanges could, consistent with the Act, charge fees that represent a reasonable markup over cost if they appropriately justify such fees, this proposed fee is designed to provide only a partial cost recovery of IEX's aggregate costs.

Further, IEX believes that a fee of $100 per Order Entry Port is reasonable in relation to the per port cost estimate in the Cost Study because: (i) Considering the five free ports for each User and the fact that some Order Entry Ports are not used but are held in reserve by the Exchange to meet increased capacity needs, IEX's aggregate cost is greater than $100 per available Order Entry Port; (ii) the Cost Study estimate was based on conservative assumptions that allocated only those costs most directly related to the product offering; and (iii) even ignoring these other factors, the $100 per port fee represents a modest increase over the $83 cost estimate and dramatically less than estimates of percentage markups for logical port fees charged by other exchanges.[51]

IEX also believes the proposed fee is a reasonable means of encouraging Users to be efficient in the number of logical ports they reserve for use, with the benefits to overall system efficiency described above with respect to unused Order Entry Ports.

Equitable Allocation and Non-Discrimination

IEX believes that its proposed fee is reasonable, fair and equitable, and not unfairly discriminatory because it is designed to align fees with services provided, will apply equally to all Members that are assigned Order Entry Ports (either directly or through a Service Bureau), and will minimize barriers to entry by providing all Members with five free Order Entry Ports. As described in the Purpose section, a significant majority of Members will not be subject to any fee, and only four Members will potentially be subject to a fee of over $5,000 per month, based on current usage. In contrast, as described above, other exchanges generally charge in excess of $500 per Order Entry Port without providing any free Order Entry Ports.[52] Even for Members that choose to maintain more than five Order Entry Ports, IEX believes that the cost-based fee of $100 is low enough that it will not operate to restrain any Member's ability to maintain the number of Order Entry Ports that it determines are consistent with its business objectives. The small number of Members projected to be subject to the highest fees will still pay considerably less than competing exchanges charge.[53] Further, the number of assigned Order Entry Ports will continue to be based on decisions by each Member, including the ability to reduce fees by discontinuing unused Order Entry Ports.

The Exchange believes that providing five free Order Entry Ports is fair and equitable, and not unfairly discriminatory because it will enable all Members to access IEX free of charge, thereby encouraging order flow and liquidity from a diverse set of market participants, facilitating price discovery and the interaction of orders. IEX believes that five Order Entry Ports is an appropriate number to provide for free because it aligns with the number of such ports currently maintained by a substantial majority of Members, as discussed in the Purpose section. Based on a review of Order Entry Port usage, 103 of 136 connected Members are not projected to be subject to any Order Entry Port fees under the proposed fee. As described in the Purpose section, while Order Entry Port usage is concentrated in a few relatively larger Members, the number of such ports requested is not based on the size or type of Member but rather correlates to a Member's inbound message volume to IEX. Further, as discussed in the Purpose section, Members with relatively higher inbound message volume also request (and are assigned) more Order Entry Ports than other Members, which in turn means they account for a disproportionate share of IEX's aggregate costs for providing Order Entry Ports. Therefore, IEX believes it is not unfairly discriminatory for the Members with higher inbound message volume to pay a modestly higher proportionate share of the Order Entry Port fees.

Accordingly, the Exchange believes that the fee will be applied consistently with its specific purpose—to partially recover IEX's aggregate costs, encourage the efficient use of Order Entry Ports, and align fees with Members' Order Entry Port and system usage.

The Exchange further believes that the proposed fees are reasonable, fair and equitable, and non-discriminatory because they will apply to all Members in the same manner and are not targeted at a specific type or category of market participant engaged in any particular trading strategy. All Members (or Service Bureaus) will receive five free

[49] *See* In the Matter of the Application of Securities Industry and Financial Markets Ass'n for Review of Action taken by NYSE Arca, Inc. and Nasdaq Stock Market, LLC, Securities Exchange Act Release No. 84432, at 51 (October 16, 2018) (''the exchanges must demonstrate that the fees are fair and reasonable, not that they are less expensive than competing products'').

[50] *See* note 35 *supra* for the calculation of IEX's projected annual Order Entry Port fee revenue.

[51] *See* Cost Study, footnote 24 at 31–32.

[52] *See* Cost Study, footnote 24 at 27.

[53] Notably, a Member that pays $10,000 in monthly Order Entry Port fees to IEX (meaning the Member is assigned 105 Order Entry Ports, with the first five being free), would pay $57,550 each month to maintain the same number of sessions on NYSE (assuming the Member was not a DMM connected to NYSE's DMM Gateway, which provides the first 12 Order Entry Ports free of charge) and $60,375 each month to maintain the same number of sessions on NASDAQ. See NYSE Price List 2019, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf* and Nasdaq General Equity and Options Rule, Equity 7 Section 115(b) (''Ports and other Services'') available at *http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_2_2&manual=%2Fnasdaq%2Fmain%2Fnasdaq-llcrules%2F.*

Order Entry Ports and pay the same $100 per Order Entry Port for each additional Order Entry Port. Each Order Entry Port is identical, providing connectivity to IEX on identical terms. While the proposed fee will result in a different effective ''per unit'' rate for different Members (or Service Bureaus) after factoring in the five free Order Entry Ports, the Exchange does not believe that this difference is material given the overall low fee of $100 per Order Entry Port. Because the first five Order Entry Ports are free of charge, each entity will have a ''per unit'' rate of less than $100. Further, the fee is not connected to volume-based tiers. All Members will be subject to the same fee schedule, regardless of the volume sent to or executed on IEX. The fee also does not depend on any distinctions between Members, customers, broker-dealers, or any other entity. The fee will be assessed solely based on the number of Order Entry Ports an entity selects and not on any other distinction applied by IEX. While entities that send relatively more inbound messages to IEX may select more Order Entry Ports, thereby resulting in higher fees, that distinction is based on decisions made by each Member and the extent and nature of the Member's business on IEX rather than application of the fee by IEX. Members (and their Service Bureaus) can determine how many Order Entry Ports they need to implement their trading strategies effectively. IEX proposes to offer multiple Order Entry Ports at a low fee to enable all Members to purchase as many Order Entry Ports as their business needs dictate in order to optimize throughput and manage latency across the Exchange.

Notwithstanding that Members with the highest number of Order Entry Ports will pay a greater percentage of the total projected fees than is represented by their Order Entry Port usage, IEX does not believe that the proposed fee is unfairly discriminatory. As discussed in the Purpose section, it is not possible to fully synchronize IEX's objective to provide five free Order Entry Ports to all Members, thereby minimizing barriers to entry and incentivizing liquidity on the Exchange, with an approach that exactly aligns the projected per Member fee with each Member's number of requested Order Entry Ports. As proposed, IEX is providing a reasonable number of Order Entry Ports to each Member (or Service Bureau) without charge. Any variance between projected fees and Order Entry Port usage is attributable to objective differences among Members in terms of the number of Order Entry Ports they determine are appropriate based on their trading on IEX. Further, IEX believes that the low amount of the proposed fee (which in the aggregate is projected to only partially recover IEX's directly-related costs) mitigates any disparate impact.

By way of comparison, IEX notes that differential pricing based on the volume of trading activity is common in other exchanges' fee structures, including, for example, the use of volume ''tiers'' that provide discounts and/or higher rebates based upon various volume-based measures of activity.[54] Under these pricing structures, a lower volume market participant pays substantially more on a per-transaction basis than higher volume members, with the stated goal of incentivizing certain types of trading activity on the exchange. In contrast, by offering five free Order Entry Ports to each User, IEX is seeking to maintain incentives for a broad cross-section of participants to trade on the Exchange, while the low per port fee applies consistently to all similarly situated market participants in a way designed to avoid imposing a material business cost on any participant.

IEX also believes that it is consistent with the Act to apply the fee (including five free Order Entry Ports) directly to Service Bureaus providing Order Entry Ports to one or more Members rather than to such Members directly because such Order Entry Ports may be shared by multiple Members and applying the fee to such Members directly would result in multiple billing for the same service. To illustrate this point, in the case of an Order Entry Port subject to the $100 fee (*i.e.,* not included in the first five free Order Entry Ports), if a Service Bureau provided access to that Order Entry Port to five Members, and if IEX charged each Member for the Order Entry Port, each of those Members would pay IEX $100 for the Order Entry Port, totaling $500, whereas a Member subscribing directly to the same Order Entry Port would pay only $100 for the connection.[55]

Further, the Exchange believes that the proposed fee is consistent with the Exchange Act because it will support its Reg SCI compliance obligations, as described in the Purpose section.

IEX also believes that it is reasonable, equitable, and not unfairly discriminatory to base its billing for Order Entry Ports on the number of Order Entry Ports assigned to each User as of the first day of each month. IEX believes that this approach is fair because Members (and Service Bureaus) will have a reasonable understanding and expectation of the cutoff date for determining whether a User has more than five assigned Order Entry Ports. Additionally, IEX's decision to wait more than a month for this proposed fee to take effect will not only allow time for market participants to comment on the proposed fee, it will also allow Users time to determine if they want to disconnect any of their assigned Order Entry Ports before the first month in which IEX will charge for assigned Order Entry Ports in excess of five.

Finally, the Exchange believes that the proposed fee is consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low, cost-based fee will enable a broad range of IEX Members to continue to connect to IEX, thereby facilitating the economically efficient execution of securities transactions on IEX, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on IEX when it is the best market.

For the foregoing reasons, the Exchange believes that the proposed fee is reasonable, equitably allocated, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on intramarket or intermarket competition that is 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 intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee is a cost-based fee, significantly less than Order Entry Port fees charged by competing venues, that is designed to enable the Exchange to partially recoup its applicable costs as described in the Purpose and Statutory Basis sections. The proposed fee is not a tiered pricing structure that requires minimum volume levels to realize economic pricing benefits. The Order Entry Ports to which the fee applies all

[54] *See, e.g.,* Securities Exchange Act Release No. 85864 (May 15, 2019), 84 FR 23109 (May 21, 2019) (SR–NYSE–2019–24).

[55] As discussed in note 34, above, IEX expects two Service Bureaus to be charged a total of $3,000 per month for their Order Entry Ports. This fee could be reduced to as little as $2,400 per month if the two Service Bureaus disconnect their unused Order Entry Ports.

have the same characteristics, and IEX is not proposing to charge a higher fee for a ''high performance'' alternative.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Members (and their Service Bureaus) are entitled to five free Order Entry Ports and subject to the same low, cost-based fee for additional Order Entry Ports. While different total fees would be assessed depending on the number of Order Entry Ports a Member (or Service Bureau) requests, these different fees are not based on the type of Member requesting the Order Entry Port(s) but on the number of such ports the Member (or Service Bureau) requests, and each Member (or Service Bureau) can determine the number of such ports to reserve. Further, providing five free Order Entry Ports is designed to avoid creating barriers to entry for smaller Members, thereby promoting intramarket competition. In addition, even Members subject to relatively higher fees for more Order Entry Ports will still be subject to a relatively low aggregate fee (and significantly less than competing exchanges, as described above) and thus the proposed fee will not operate as a barrier to entry for such Members or impose a significant business cost burden on such Members relative to their levels of business activity. Finally, as described in the Purpose section, the proposed fee change is designed to assist the Exchange in complying with its Reg SCI compliance obligations to have levels of capacity adequate to maintain IEX's operational capability and promote the maintenance of fair and orderly markets, thereby promoting both intermarket and intramarket competition by enabling IEX to support a robust trading environment for its Members and compete with other equities venues.

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) [56] of the Act.

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 under Section 19(b)(2)(B) [57] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2019–07 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–IEX–2019–07. 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 offices 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–IEX–2019–07, and should be submitted on or before September 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17487 Filed 8–14–19; 8:45 am]

BILLING CODE 8011–01–P

[56] 15 U.S.C. 78s(b)(3)(A)(ii).

[57] 15 U.S.C. 78s(b)(2)(B).

[58] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10849]

Notice of Determinations; Culturally Significant Object Imported for Exhibition—Determinations: ''Undo This Last: 200 Years of John Ruskin'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be included in the exhibition ''Undo This Last: 200 Years of John Ruskin,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Yale Center for British Art, New Haven, Connecticut, from on or about September 5, 2019, until on or about December 8, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999,

and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–17543 Filed 8–14–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10847]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Vija Celmins: To Fix the Image in Memory'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Vija Celmins: To Fix the Image in Memory,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about September 24, 2019, until on or about January 12, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–17539 Filed 8–14–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10848]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Christ: Life, Death, and Resurrection, Italian Renaissance Drawings and Prints From the British Museum'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Christ: Life, Death, and Resurrection, Italian Renaissance Drawings and Prints from the British Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the University of San Diego's University Galleries, San Diego, California, under the title ''Christ: Life, Death, and Resurrection,'' from on or about September 13, 2019, until on or about December 13, 2019; at the Timken Museum of Art, San Diego, California, under the title ''Masterpieces of Italian Drawings from the British Museum,'' from on or about September 6, 2019, until on or about December 15, 2019; at the New Mexico Museum of Art, Santa Fe, New Mexico, under the title ''The Birth, Death and Resurrection of Christ: from Michelangelo to Tiepolo,'' from on or about January 25, 2020, until on or about April 19, 2020; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–17546 Filed 8–14–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10836]

Notice of Department of State Sanctions Actions Pursuant to Executive Order 13846 of August 6, 2018

SUMMARY: The Secretary of State has determined, in consultation with the heads of relevant agencies, that the Chinese entity Zhuhai Zhenrong Company Limited (Zhuhai Zhenrong), has knowingly, on or after November 5, 2018, engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran. The Secretary of State has selected certain sanctions to be imposed upon Zhuhai Zhenrong and Youmin Li, Zhuhai Zhenrong's Executive Director and General Manager, who has been determined to be (i) a corporate officer or principal of Zhuhai Zhenrong and (ii) a principal executive officer of Zhuhai Zhenrong, or to perform similar functions with similar authorities as such an officer.

DATES: The Secretary of State's determination that Zhuhai Zhenrong has knowingly, on or after November 5, 2018, engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran, and the Secretary of State's selection of certain sanctions to be imposed upon Zhuhai Zhenrong and Youmin Li, are effective on September 16, 2019.

FOR FURTHER INFORMATION CONTACT: Taylor Ruggles, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647–7677, email: *RugglesTV@state.gov.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to section 3(a)(ii) of E.O. 13846, the Secretary of State has selected the following sanctions to be imposed upon Zhuhai Zhenrong:

- Prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Zhuhai Zhenrong has any interest;

• Prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Zhuhai Zhenrong;

• Block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of Zhuhai Zhenrong, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

• Prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of Zhuhai Zhenrong;

• Restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from Zhuhai Zhenrong; and

• Impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of Zhuhai Zhenrong the sanctions described in sections 5(a)(i)–5(a)(iv) and 5(a)(vi) of E.O. 13846, as selected by the Secretary of State (as described below).

Pursuant to sections 4(e) and 5(a)(vii) of E.O. 13846, the Secretary of State has selected the following sanctions to be imposed upon Youmin Li, Zhuhai Zhenrong's Executive Director and General Manager, who has been determined to be (i) a corporate officer or principal of Zhuhai Zhenrong and (ii) a principal executive officer of Zhuhai Zhenrong, or to perform similar functions with similar authorities as such an officer:

• The Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, Youmin Li;

• Prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Youmin Li has any interest;

• Prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Youmin Li;

• Block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of Youmin Li, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in; and

• Restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from Youmin Li.

Manisha Singh,

Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2019–17538 Filed 8–14–19; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 10850]

Notice of Public Meeting

The Department of State will conduct an open meeting at 1:00 p.m. on Tuesday, August 27, 2019, in room 7M15–01 of the Douglas A. Munroe Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593. The primary purpose of the meeting is to prepare for the sixth session of the International Maritime Organization's (IMO) Sub-Committee on Carriage of Cargoes and Containers to be held at the IMO Headquarters, United Kingdom, September 9–13, 2019.

The agenda items to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Amendments to the IGF Code and development of guidelines for low-flashpoint fuels
—Amendments to the IGC and IGF Codes to include high manganese austenitic steel and related guidance for approving alternative metallic material for cryogenic service
—Amendments to the IMSBC Code and supplements
—Amendments to the IMDG Code and supplements
—Amendments to the CSS Code with regard to weather-dependent lashing
—Unified interpretation of provisions of IMO safety, security, and environment-related conventions
—Consideration of reports of incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas
—Revision of the *Inspection programmes for cargo transport units carrying dangerous goods* (MSC.1/Circ.1442, as amended by MSC.1/Circ.1521)
—Biennial status report and provisional agenda for CCC 7
—Election of Chair and Vice-Chair for 2020
—Any other business
—Report to the Committees

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference, up to the capacity of the teleconference phone line. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Dr. Amy Parker, by email at *Amy.M.Parker@uscg.mil,* by phone at (202) 372–1423, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington DC 20593–7509 not later than August 22, 2019, six days prior to the meeting. Requests made after August 22, 2019 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters building. USCG Headquarters is accessible by taxi, public transportation, and privately owned conveyance (upon request).

Jeremy M. Greenwood,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, U.S. Department of State.

[FR Doc. 2019–17544 Filed 8–14–19; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36336]

Savannah & Old Fort Railroad, L.L.C.—Change in Operator Exemption—Golden Isles Terminal Railroad, Inc.

Savannah & Old Fort Railroad, L.L.C. (SOFR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to permit SOFR to acquire from CSX Transportation, Inc. (CSXT), by assignment of lease, and to operate, approximately 6.45 miles of rail line between milepost ASO 493.3 at or near Staley Avenue and milepost ASO 499.75 at the end of the line, in Savannah, Ga. (the Line). SOFR states that the Line is currently being operated by Golden Isles Terminal Railroad, Inc. (GITM), a subsidiary of Genesee & Wyoming, Inc.

According to SOFR, GITM acquired the track, rails, ties, ballast, culverts, and all other non-real property assets and leased the real property from CSXT under an agreement scheduled to terminate on August 29, 2019. *See Golden Isles Terminal RR.—Acquis. & Operation Exemption—CSX Transp., Inc.,* FD 34539 (STB served Sept. 15, 2004).

The verified notice indicates that CSXT and GITM have agreed to enter an

agreement for GITM to resell the track, rails, ties, ballast, culverts, and all other non-real property assets and an agreement to assign the lease to CSXT. Additionally, SOFR is entering into an agreement with CSXT whereby SOFR will be assigned the ownership of the track, rails, ties, ballast, culverts, and all other non-real property assets that comprise the Line and the lease of the real property from CSXT, thus succeeding SOFR as the lessee and operator of the Line. As a result, SOFR represents that CSXT will not acquire track, rails, ties, ballast, culverts, and all other non-real property assets, but will assign its rights under the agreements to SOFR prior to the termination of GITM's lease.

This transaction is related to a concurrently filed verified notice of exemption in *Watco Holdings, Inc.—Continuance in Control Exemption—Savannah & Old Fort Railroad, L.L.C.,* Docket No. FD 36337, in which Watco Holdings, Inc., seeks Board approval to continue in control of SOFR upon SOFR's becoming a Class III carrier.

SOFR states that the proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. SOFR certifies that its projected annual revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million.

Under 49 CFR 1150.32(b), a change in operators requires that notice be given to shippers. SOFR certifies that it has provided notice of the proposed change in operator to all shippers located on the Line.

The earliest this transaction may be consummated is August 29, 2019 (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 22, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36336, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on SOFR's representative, Karl Morell, Karl Morell and Associates, 440 1st Street NW, Suite 440, Washington, DC 20001.

According to SOFR, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 12, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–17550 Filed 8–14–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36288]

OmniTRAX Holdings Combined, Inc. and HGS Railway Holdings, Inc.—Continuance in Control Exemption—Cleveland & Cuyahoga Railway, LLC

OmniTRAX Holdings Combined, Inc. (OmniTRAX), and HGS Railway Holdings, Inc. (HGS), both noncarriers, (collectively, Applicants) have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Cleveland & Cuyahoga Railway, LLC (CCR) upon CCR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Cleveland & Cuyahoga Railway—Change in Operator Exemption Containing Interchange Commitment—Cleveland Commercial Railroad,* Docket No. FD 36287. In that proceeding, CCR seeks an exemption under 49 CFR 1150.31 to acquire by assignment from Cleveland Commercial Railroad Company, LLC (Cleveland Commercial): (1) A lease agreement between Wheeling & Lake Erie Railway Company and Cleveland Commercial; and (2) a lease agreement between Norfolk Southern Railway Company and Cleveland Commercial. Upon consummation, CCR will replace Cleveland Commercial as the lessee and operator of approximately 35.7 miles of railroad line as follows: (1) A 10.4-mile rail line located in Cuyahoga County, Ohio, between milepost 15.5 at Falls Junction in Glenwillow, and milepost 5.1 in Cleveland; and (2) a 25.3-mile rail line located in Cuyahoga and Portage Counties, Ohio, between milepost RH 2.2+/- in Cleveland, and milepost RH 27.5+/- in Aurora (collectively, the Lines).

The earliest this transaction may be consummated is August 30, 2019.[1]

Applicants will continue in control of CCR upon CCR's becoming a Class III rail carrier. According to Applicants, OmniTRAX currently controls 18 Class III railroads and HGS currently controls two Class III railroads, and the properties of the rail carriers controlled by OmniTRAX and HGS are located in in the following states: Alabama, California, Colorado, Florida, Georgia, Illinois, Kansas, Nebraska, Ohio, Oklahoma, Texas, and Washington.[2]

Applicants state that: (1) The Lines to be operated by CCR do not connect with any other railroads operated by carriers controlled by OmniTRAX or HGS; (2) the continuance in control is not part of a series of anticipated transactions that would connect the Lines with any other railroads in the OmniTRAX or HGS corporate families; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the

[1] The verified notices in Docket Nos. FD 36287 and FD 36288 were initially submitted on April 1, 2019. On April 15, 2019, CCR requested that the Board hold both dockets in abeyance until it could complete negotiations regarding the NS Line, and the request was granted. On July 16, 2019, CCR notified the Board that it had completed its negotiations and requested that the Board process the verified notices in both dockets. On July 31, 2019, CCR filed a supplement in Docket No. FD 36287 clarifying that that proceeding should be a change in operator exemption and providing the most recent version of the lease agreement. In light of that supplement, July 31 is deemed the filing date of the change in operator exemption in Docket No. FD 36287, and its effective date is August 30, 2019. Because this continuance in control exemption is exercised only when the change in operator transaction is consummated, its effective date likewise will be August 30, 2019.

[2] Specifically, OmniTRAX currently controls: Alabama & Tennessee River Railway, LLC; Brownsville & Rio Grande International Railway, LLC; Chicago Rail Link, LLC; Fulton County Railway, LLC; Georgia & Florida Railway, LLC; Georgia Woodlands Railroad, LLC; Great Western Railway of Colorado, LLC; Illinois Railway, LLC; Kettle Falls International Railway, LLC; Manufacturers' Junction Railway, LLC; Nebraska, Kansas & Colorado Railway, LLC; Newburgh & South Shore Railroad, LLC; Northern Ohio & Western Railway, LLC; Panhandle Northern Railway, LLC; Peru Industrial Railroad, LLC; Sand Springs Railway Company; Stockton Terminal and Eastern Railroad; and Central Texas & Colorado River Railway LLC. HGS currently controls HGS–ATN, LLC and HGS–FCR, LLC.

exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than August 23, 2019.

All pleadings, referring to Docket No. FD 36288, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Applicants' representative, Karl Morell, Karl Morell and Associates, 440 1st Street NW, Suite 440, Washington, DC 20001.

According to Applicants, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 12, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–17548 Filed 8–14–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36287]

Cleveland & Cuyahoga Railway, LLC—Change in Operator Exemption Containing Interchange Commitment—Cleveland Commercial Railroad Company, LLC

Cleveland & Cuyahoga Railway, LLC (CCR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Cleveland Commercial Railroad Company, LLC (Cleveland Commercial) two lease agreements and to operate approximately 35.7 miles of rail line as follows: (1) A 10.4-mile rail line located in Cuyahoga County, Ohio, between milepost 15.5 at Falls Junction in Glenwillow, and milepost 5.1 in Cleveland (the W&LE Line); and (2) a 25.3-mile rail line located in Cuyahoga and Portage Counties, Ohio, between milepost RH 2.2+/- in Cleveland, and milepost RH 27.5+/- in Aurora (the NS Line) (collectively, the Lines).

The verified notice states that Cleveland Commercial entered into an agreement with the Wheeling & Lake Erie Railway Company in 2004 to lease and operate the W&LE Line, *see Cleveland Commercial R.R.—Change in Operators Exemption—Wheeling & Lake Erie Ry.,* FD 34521 (STB served Aug. 6, 2004), and an agreement with Norfolk Southern Railway Company in 2009 to lease and operate the NS Line, *see Cleveland Commercial R.R.—Lease & Operation Exemption—Norfolk Southern Ry.,* FD 35251 (STB served May 29, 2009).

According to CCR, Cleveland Commercial and CCR now have entered into an agreement under which Cleveland Commercial will assign both leases to CCR. As a result, CCR will replace Cleveland Commercial as the lessee and operator of the Lines.

This transaction is related to a concurrently filed verified notice of exemption in *OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—Cleveland & Cuyahoga Railway,* Docket No. FD 36288, in which OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc., both noncarriers, seek Board approval to continue in control of CCR under 49 CFR 1180.2(d)(2) upon CCR's becoming a Class III rail carrier.[1]

CCR certifies that its projected annual revenues as a result of the transaction will not result in the creation of a Class II or Class I carrier and will not exceed $5 million. As required under 49 CFR 1150.33(h)(1), CCR has disclosed in its verified notice that the lease agreement governing the NS Line contains an interchange commitment in the form of lease credits.[2] CCR has provided additional information regarding the interchange commitment as required by 49 CFR 1150.33(h).

Under 49 CFR 1150.32(b), a change in operators requires that notice be given to shippers. In its July 31, 2019 supplement, CCR states that it has provided notice of the proposed transaction to all active shippers on the Lines in the last two years.

The earliest this transaction may be consummated is August 30, 2019 (30 days after the verified notice was filed).[3] If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 23, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36287, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on CCR's representative, Karl Morell, Karl Morell and Associates, 440 1st Street NW, Suite 440, Washington, DC 20001.

According to CCR, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 12, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–17547 Filed 8–14–19; 8:45 am]

BILLING CODE 4915–01–P

[1] The verified notices in Docket Nos. FD 36287 and FD 36288 were initially submitted on April 1, 2019. On April 15, 2019, CCR requested that the Board hold both dockets in abeyance until it could complete negotiations regarding the NS Line, and the request was granted. On July 16, 2019, CCR notified the Board that it had completed its negotiations and requested that the Board process the verified notices in both dockets. On July 31, 2019, CCR filed a supplement clarifying that Docket No. FD 36287 should be a change in operator exemption and providing the most recent version of the lease agreement.

[2] A copy of the lease agreement with the interchange commitment was submitted under seal. *See* 49 CFR 1150.33(h)(1).

[3] The date of CCR's supplement (July 31, 2019) will be considered the filing date for the purposes of calculating the effective date of the exemption.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36337]

Watco Holdings, Inc.—Continuance in Control Exemption—Savannah & Old Fort Railroad, L.L.C.

Watco Holdings, Inc. (Watco), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Savannah & Old Fort Railroad, L.L.C. (SOFR), upon SOFR's becoming a Class III carrier. Watco owns, indirectly, 100% of the issued and outstanding stock of SOFR.

This transaction is related to a concurrently filed verified notice of exemption in *Savannah & Old Fort Railroad—Change in Operator Exemption—Golden Isles Terminal Railroad,* Docket No. 36336, in which SOFR seeks an exemption under 49 CFR 1150.31 to acquire from CSX Transportation, Inc., by assignment of lease, and to operate, approximately 6.45 miles of rail line between milepost ASO 493.3 at or near Staley Avenue and milepost ASO 499.75 at the end of the line, in Savannah, Ga. (the Line). Upon consummation of the transaction in Finance Docket No. 36336, SOFR would become a Class III carrier.

The earliest this transaction may be consummated is August 29, 2019, the effective date of the exemption (30 days after the verified notice was filed).

Watco states that it currently controls, indirectly, 38 Class III rail carriers [1] and one Class II rail carrier, collectively operating in 27 states.[2] For a complete list of these rail carriers and the states in which they operate, see Watco's notice of exemption filed on July 30, 2019.[3] The notice is available at *www.stb.gov.*

Watco represents that: (1) The rail line to be operated by SOFR does not connect with any lines of any other Watco-controlled rail carriers; (2) the proposed continuance in control of SOFR is not part of a series of anticipated transactions that would connect the Line with the rail lines of any other railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is, therefore, exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves control of one Class II and one or more Class III rail carriers, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central, Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than August 22, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36337, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Watco's representative, Karl Morell, Karl Morell & Associates, 440 1st Street NW, Suite 440, Washington, DC 20001.

According to Watco, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 12, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–17551 Filed 8–14–19; 8:45 am]

BILLING CODE 4915–01–P

[1] In its verified notice, Watco states that it currently controls 39 Class III railroads, but this appears to be a misstatement, as the number of Class III carriers listed elsewhere in the notice adds to 38.

[2] Although Watco's verified notice indicates that the carriers it controls operate in 25 states, the notice lists 27 different states.

[3] The list of carriers on pages 4–5 of the verified notice does not include Ithaca Central Railroad, LLC, though that carrier is listed as one of the applicants on page 9.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0094]

Deepwater Port License Application: Bluewater LLC; Extension of Scoping Period

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: By **Federal Register** notice of Wednesday, July 3, 2019, titled *Deepwater Port License Application: Bluewater Texas Terminal LLC (Bluewater),* the U.S. Coast Guard (USCG), in coordination with the Maritime Administration (MARAD), announced the intent to prepare an environmental impact statement (EIS) as part of the environmental review of the Bluewater Texas Terminal LLC (Bluewater) deepwater port license application. Publication of that notice began a 30-day scoping process, announced the date and location of a public scoping meeting as well as requested public participation to assist in the identification and determination of the environmental issues to be addressed in the EIS. This extension is due to delays in getting the application properly posted to the Federal docket. This **Federal Register** Notice announces the date of the extended scoping period.

DATES: Comments or related material on the Bluewater deepwater port license application must be received by August 30, 2019.

ADDRESSES: The public docket for the Bluewater deepwater port license application is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The license application is available for viewing at the *Regulations.gov* website: *http://www.regulations.gov* under docket number MARAD–2019–0094.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* If you submit your comments electronically, it is not necessary to also submit a hard copy. If you cannot submit material using *http://www.regulations.gov,* please contact either Mr. Roddy Bachman, USCG or Yvette Fields, MARAD, as listed in the following **FOR FURTHER INFORMATION CONTACT** section of this document, which also provides alternate instructions for submitting written comments. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted. Anonymous comments will be accepted. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. The Federal Docket Management Facility's telephone number is 202–366–9317 or 202–366–9826, the fax number is 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, U.S. Coast Guard, telephone: 202–372–1451, email: *Roddy.Bachman@uscg.mil* or Ms. Yvette Fields, Maritime Administration, telephone: 202–366–0926, email: *Yvette.Fields@dot.gov.* For questions regarding viewing the Docket, call Docket Operations, telephone: 202–366–9317 or 202–366–9826.

SUPPLEMENTARY INFORMATION:

Request for Comments

We request public comment on this proposal. The comments may relate to, but are not limited to, the environmental impact of the proposed action. All comments will be accepted. You may submit comments directly to the Federal Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the extended scoping period.

The license application, comments and associated documentation, as well as the draft and final EISs (when published), are available for viewing at the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2019–0094.

Public comment submissions should include:

- Docket number MARAD–2019–0094.

• Your name and address.

Submit comments or material using only one of the following methods:

• Electronically (preferred for processing) to the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2019–0094.

• By mail to the Federal Docket Management Facility (MARAD–2019–0094), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

• By personal delivery to the room and address listed above between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

• By fax to the Federal Docket Management Facility at 202–493–2251.

Faxed, mailed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches and suitable for copying and electronic scanning. The format of electronic submissions should also be no larger than 8½ by 11 inches. If you mail your submission and want to know when it reaches the Federal Docket Management Facility, please include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments, all submissions will be posted, without change, to the FDMS website (*http://www.regulations.gov*) and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS website and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see Privacy Act. You may view docket submissions at the Federal Docket Management Facility or electronically on the FDMS website.

Privacy Act

The electronic form of all comments received into the FDMS can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The Department of Transportation Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or by visiting *http://www.regulations.gov.*

(Authority: 33 U.S.C. 1501, *et seq.,* 49 CFR 1.93(h)).

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–17483 Filed 8–14–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending June 30, 2019. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABE	HIDEHI	
ABE	KAZUE	
ABOTOMEY	SARAH	VICTORIA
ABUMOHOR	CRISTIAN	
ADACHI	HUBERT	TOMOHIRO
ADAM	SABINE	HELENE
AKAKI	MAYUMI	
AKONI	OLUWALOLOLA	BOLADALE
ALBRIGHT	DELMER	LEE
ALKAZEMI	BADER	FAISAL
ALKHABORI	KHADIJA	SALEEM JAWAD
ALLAN	ALEXANDER	MACMILLIAN
ALLEN	MICHAEL	JAMES
ALLISON	RALPH	ROBERT
ALLISON	RALPH	ROBERT
ALSCHULER	ZOE	JULIE
AMRIATI-LOEVAAS	KAREN	ELISE
ANDERSON	JAN	LOIS
ARROYABE	MIREN	EDITH
ARZE	LUIS	ELIAS
ASCARELLI	DIDIER	MARCEL
ATWOOD	HANNAH	LLOYD
AZUMANE	MINAMI	ELLEN
BACKUS	KENNETH	ALAN
BACKUS	KRISTI	NICOLE MURRAY
BAECHLE	STEFAN	
BAIRD	THOMAS	
BARFORD MANN	PATRICIA	STEVENS
BARNES	CHRISTOPHER	JOHN
BARRETT	EILEEN	SUSAN
BARTA	GABRIEL	STROMAN
BARTELS	RACHEL	MARIE PAULE
BARTHOLOMEW	MICHAEL	ANTHONY
BARTOLOMEU	BOGDAN.	
BATH	SIERRA JANE	TREFRY
BATLIWALA	NASLI	J.

Last name	First name	Middle name/initials
BAUR	ERIC	ALAN
BEAN	MARTIN	G.
BEAUDET	LILIANNE	
BELANGER	LUKE	GREGORY
BELL	CAROL	EVELYN
BELL	CHRISTOPHER	WILLIAM
BELL	KENNETH	F.
BENIDICKSON	KIRSTEN	HANNAH
BENJAMIN	JOANNA	HELEN
BENNETT	GARY	MICHAEL
BERGER	MICHELE	LORRAINE
BERRY	JOSEPHINE	KENNISON
BLANCO	VICTOR	M.
BLANCPAIN	MICHELE	AIMEE
BOISSEAU	ETIENNE	LUC
BONIFATI	ALDO	BERARDINO
BOOTH	KIMBERLY	ANN
BRAMS	MURIEL	HUGUETTE
BRASSINGTON	SHELLEY	LIANNE
BRAUNLING	YOHAN	MORGEN
BRENNA	GUISEPPE	
BRICKMAN	RENA	YEDIDAH
BRIMACOMBE	JESSICA	ANNE
BROLLY	ALISON	FREELAND
BROOKS	PATRICIA	SUE
BROWNE	THOMAS	CARL
BRUNNING	DALE	KIYOMI
BRUSTLEIN	PAULINE	MARGARET
BUCHANAN	AMELIA	LOUISE
BUFF	MARCEL	
BUGNION	EDOUARD	
BULLIVANT	DAWN	MARIE
BURGER	BEN	
BURKHARD	LILLY	JANET
CAI	XINMEI	
CALIN	SASHA	
CALLONI	JUNKO	
CAMBRIDGE	GEORGE	W.
CAMBRIDGE	SANDRA	J.
CAMPAIN	ANNA	ELIZABETH
CAMPBELL	JUDITH	ANNE
CAMPITES	JEANE	ALYSON
CARLSON	JAMES	BRADLEY
CARR	MARGARET	MARY
CARTWRIGHT	KIMBERLY	DIANE
CARTWRIGHT	MICHAEL	ALEXANDER
CARTWRIGHT	TAMARA	J.
CASABLANCAS	ALINE	
CASELLA	ANAIS	MICHELLE
CASELLA	EMILIA	ANN
CASTIAUX	ARSENE	JAMES ARTHUR GASTON
CASTILLO	CONSUELO.	
CAUSEY	ALEXANDER	STUART
CAVANAGH	DIANE	ELAINE
CHAN	CHRISTINE	SUK YEE
CHAN	DANIEL	QUINCY
CHANDRASEKARAN	RAJARAMAN	
CHAOUSIS	LINDA	GAY
CHEAH	HENRY	KAH-LOON
CHEN	KERR	FONG
CHEN	PAMELA	PIN-YING
CHIU	AGNES	SIU BING
CHIU	ALFRED	JAK SHING
CHOI	SEUNGGUN	
CHOW	MEI-CHI	KUO
CHUBBUCK	DONALD	ALLAN
CHUNG	PINGHUANG	
CLOUSTON	KATHRYN	LOGAN
CONWAY	KATHLEEN	
CONWAY	KATHLEEN	GETRUDE
COOTE	MELISSA	RUTH
COULTER	JAY	BRADLEY
CRAWSHAW	BARBARA	JOYCE
CRITES	RICHARD	RAY

Last name	First name	Middle name/initials
CRITTIN	DYLAN	
CRITTIN	PAULINE	
CROSETTI	KEVIN	
CUENOUD	DORIANNE	ALICE
CURTH	S	LOUISE
DAY	SELINA	MARIE
DE DAUNANT	LAURENCE	FRANCOISE COLOMB
DE GEEST	ANNA	FREDERIKA ELZA
DE PENTHENY O'KELLY	CLARISSA	D V
DE RICHEMONT	MARIE	EGLE
DE ZOETE	MARLEEN	
DEAKIN	DAVID	G.
DEAKIN	SUSAN	C.
DELAPRAZ	LUCIEN	ALBERT
DELEBARRE	CLEMENCE	HELENE
DELIA–WENTA	NATHALIE	MARIE
DETRICK	SHARON	LYNN
DHALIWAL	KULDIP	SINGH
DI FIORE	ELIZABETH	ELICE
DICKSON	CHERYL	LEE
DION	HENRI-LOUIS	
DION	JEAN-CHARLES	
DION	JULIETTE	
DIXON	DOUGLAS	ALAN
DOBRETZ	KATIA	HELENA
DONNELLY	KIERAN	PATRICK
DONNELLY	MARK	T.
DORIG	CHRISTOPHER	
DUAN	LUMING	
DUBUIS	REBECCA	GRACE
DUFFY	GAVIN	RAYMOND
DUGDALE	WILLIAM	STRATFORD
DUTIA	DIPA	G.
DUTILLEUX	CELIA	
EATON	ANDREA	
EBIIKE	NOBUTSUGU	
EDDY	CHRISTOPHER	DARRYL
EDKINS	DAVID	JAMES
ELDRED	DAVID	N.
ELIZONDO	LUIS	
ELLINSON	AVIGAIL	
ELLIOTT	SAMUEL	THOMAS SHINSUKE
ELLIS	MARLON	
ELMIGER	HILDA	MARIA
EMERY-GOODMAN	ALICE	ANNE
ENDRES	PAUL	FREDERICK
ERNST	WOLFGANG	ERHARD
EVANS	KIM	BERTRAM
FACCHETTI	MELANIE	E.
FARRA	MONA	
FASTENAU	MAUREEN	KAREN
FEAZELL	JACQUELINE	A.
FENG	DAOJI	
FERBRACHE	RORY	THOMAS
FIDDLER	DENNIS	GEORGE
FILATI	STEPHAN	VALENTIN
FINLAYSON	HELENE	SARI
FITT	NICOLE	SUZANNE
FLEMING	THOMAS	ROLAND
FORCE	JAMES	MICHAEL
FOSTER	SHARON	LEE
FRANCIS	LAURA	REBECCA
FRANCZYK JR	GREGORY	
FRASER	CHRISTOPHER	JAMES
FREEMAN	EDWARD	BICKNELL
FRENCH	ELIZABETH	ANNE
FROMOW	LESLIE	ANN
FUJITA	ADAM	SCOTT MASARU
FUMEY	HARRY	WALTER
FUTAMI	AKIKO	
GALE	BRONSON	CHARLES GUINESS
GALLAGHER	BARBARA	ANNE
GARRIDO	PAULA	G.
GAUVREAU	GUY	GASTON

Last name	First name	Middle name/initials
GAVILANO	RAPHAEL	BRUNO
GAW	GARYK	GAVRIEL YAN HONG
GELLINGS	BONITA	KATHRYN
GILCHRIST	MARILYN	LOUISE
GLOVER	YUMI	O.
GLUCKSBIERG	LUCIE	HENRIETTE PHILIPPINE DECAZES DE
GORBATSOV	STEPAN	
GRASSI	MATTEO	GIOVANNI
GRAY	STEVEN	MICHAEL
GREENE	ALLISON	MARIE
GRIFFIOEN	MAAIKE	ELISABETH
GRIGNOLO	LAURENCE	NOEL DE RICHEMONT
GRILL	SAMUEL	
GRONDIN	PHILIPPE	PAUL
GROOT	MARJOLEIN	JOHANNA IRMA
GUALZATA	LINDA	LOUISE
HAAG	BENEDIKT	THOMAS
HADLEY	KARINA	LESLIE
HADLEY	MATTHEW	STEINSVIK
HALPERN	ALEXANDER	RUSTAM
HAMILTON	JEREMY	DAVID
HAN	WEON	SHIK
HANCOCK	ROBERT	FARRELL
HANEY	JOANNE	G.
HANEY	JOHN	S.
HANNOUSH	MOHAMMAD	MAZEN
HAQQ	DONNA	MARIE
HARDS	JONATHAN	EDWARD
HARMS	STEPHAN	CRAIGE
HARRINGTON	JILLIAN	LEIGH
HARRINGTON	RITA	RAE
HARTNAGEL	PATRICIA	ANN
HASHIMOTO	MANAMI	
HASLER	CHANTAL	
HASPESLAGH	FREDERIK	MICHAEL
HATHORN	MICHAEL	GLEN
HAYES	DAVID	M.
HAYES	DAVID	MICHAEL
HAYES	MAUREEN	ANNE
HAYOZ	CLAUDIA	NICOLE
HENNET	NIELS	SANDER
HENRIE	JANET	CAROL
HESSENKAMP-SUWAN	RATANA	
HEWSON	LUCY	MARIE
HIMMER	ELLEN	HURST
HINO	TOSHIAKI	
HIRSH	ADAM	HOWARD
HO	STEPHANIE.	
HOANG	MINH	THANH
HOFFMAN	DEBORAH	KAY
HONEYCOMBE	CAYLIE	SUSAN
HOOGDUIN	LUCAS	
HORNE	BARRETT	WAYNE
HORNE	CAROL	LOUISE
HOWARD	CHRISTOPHER	MICHAEL
HSU	ANDREAS	JING
HSU	ARWEN	
HUBBARD	SARAH	LOUISE
HUGUENIN	ROGER	PHILIP
HURLEY	DANIELLE	SUZANNE
HYDE	ROGER	E.
ICHIKAWA	IZUMI	
ICHIKAWA	MOTOSUGU	
INOUE	MASAO	
IRISH	MARJIANA	MARIE
ISENEGGER	BEATRICE	VERONICA
JAGIELOWICZ	JULIE	DAWN
JANNINK	ALEXANDRINE	
JOHNS	LORENZO	BENEDETTO FRANCESCO
JOHNSON	BRIAN	CHARLES
JOHNSON	LISA	FRANCESCA
JOHNSON	SUSAN	
JONGMA	CAROLINE	TINOU
JU	JIANHONG (Also, pls confirm sp)	

Last name	First name	Middle name/initials
JUNG	GIL	YOUNG
KAFKA	DEBORAH	HETTY
KAMMEIJER	JACK	ALBERT
KANNEWISCHER	FRANZISKA	MARIE-THERESE
KATSUKI	KIMIO	
KATSUKI	YAEKO	
KAWAHARA	YOSO	
KAWAHARA	YUMIKO	
KAWAJIRI	YOSHIAKI	
KAYAMORI	KARIYA	
KEELING	DAVID	JONATHAN
KELLER	ISABEL	GRACE
KEMP	ALEXANDER	ROSS
KETTANEH	TALAL	MICHAEL GABRIEL
KHAN	RUKHSANA	
KHELIL	NAWEL	
KING	ROXANNE	LEE KEIKO
KIRBY	ROGER	JAMES CROMPTON
KITAO	KATSUNORI	
KLAN	REBECCA	LYNN
KOMATSU	MISAKI	
KOMSKY	MARGARITA	
KOMSKY	SAMUEL	GREGORY
KONDO	AKINA	
KOPP	LI	
KORTEWEG	HANS	ANTON WILLEM
KROIS	DANIEL	ARTHUR JAN
KRONFOL	MOHIEDDINE	NABIL
KUNG	BERNARD	YUE CHUN
KURIHARA	YUMI	
KWAN	YOW-HON	
LAENNEC	CHRISTINE	MONEERA
LAFORGE	CLAUDINE	GHISLAINE
LAINCY	DANNY	
LAM	KAREN	KA LAI
LAMOND	DAVID	BLYTH
LAMSAM	VARANGKANA	
LANDON	VERNON	REX
LANE	PATRICIA	CHARLOTTE
LANE	REBECCA	LESLEY
LAUBSCHER	DANIEL	
LAUGHRAN	PATRICK	ALLEN
LAVIOLETTE	ALEXANDER	BEAU
LAWRENCE	SANDRA	LOUISE
LAWS	ELISA	SASHA
LEA	COREY	MICHAEL
LEALE	ALEXANDRA	LEIGH OLGA
LEBLANC	DENA	BETH
LEBLANC	JOSEPH	MICHAEL
LEBL-GOBET	OLGA	DENISE
LECOMPTE	DAVID	GREGORY
LEE	HYUNHEE	
LEE	KELVIN	J.
LEE	LINDA	LI–WEN
LEECHAWENGWONGS	ELISSA	
LEHMANN	THOMAS	MICHAEL
LELIEVRE	NADINE.	
LESTER	JAMIE	E.
LI	KERRY	JINGQUAN
LI	SABRINA.	
LI	WU	
LIAO	Z	SHAUN
LIEFELD	ERIN	
LIEFELD	KERRY	ANNE
LIEFIELD	JOHN	PAUL
LIN	JENG	YII
LINCKE	FRIEDRICH	
LOCKHART	ELIZABETH	BLAIR
LOCKSHIN	LAWRENCE	STEVEN
LOCKSHIN	NATHANIEL	HENRIE
LOW	MENGXI	
LU	SIDNEY	
LU	THEODORE	
LUTZ	SIMON	

Last name	First name	Middle name/initials
MacDONALD	LARA	ELAINE
MACHOWSKA	ELWIRA	J.
MacLEOD	ANN	LOUISE
MacPHERSON	SUZANNE	ELYZABETH
MADI	CHARLES	VICTOR SHYBEN
MADISON	MARLA	ETHEL
MAES	PASCALE	
MAITLAND	SHOKO	
MANZONI	SILVIO	GIUSEPPE
MARINELLI-POOLE	ANNE	LOUISE
MARION	DAVID	MARC
MARTELL	RODRIGO	JAVIER
MARTIN	DALE	ANDRE
MARTIN	ROCHELLE	RAE
MASE	CHARLES	
MATEER	ALEXANDRA	COLTON HAND
MATTEINI	GINO	
McGOWEN	MARTIN	JOHN
MCGUIRE	BRIAN	M.
MCGUIRE	PATRICK	FINAN
McMULLEN	TRAVIS	LEO
MCNAIR	ANNE	MARIE
McTAGGART	SARA	RUTH
MEDLEY	CHRISTINE	MARGARET
MENDICINI	BARBARA	FIORI PIETRAFESA
MEREDITH	ASHLEY	NICOLE
MEREDITH	SUSAN	LYNN
MEYER	THOMAS	EMANUEL
MIAH	MOHAMMED	ABDUS SOBHAN
MILLER	RALPH	DAVID
MILLS	WAYNE	RUSSELL
MOBASSALEH	MARIAM	
MOFFAT	PATRICIA	DIETTERLE
MOHAN	JEREMY	G.
MONIZ	ROZARIO	A.
MOOSMANN	MARY	ROSE
MORRISON	ERIN	LEIGH
MORRISON	MICHELE	
MORSE	CHRISTOPHER	RAYMOND
MORTON	SANDRA	JO
MOSELEY	BRUCE	GRANT
MOUNT	BRIAN	SCOTT
MYOI	MINA	SHARON
NAESTED	NAOMI	MARNA SYLVIE
NAKAGAWA	MICHIKO	
NAKAMURA	KENJI	
NAKAMURA	SHIZUKA	
NAKAMURA	YOKO	
NAND	JANICE	SHEILA
NARULA	MANHAD	
NASIB	NASIB	ATIQ JUMA
NATHAN	IDIT	ELIA
NELSON	JOHN	MARK
NEUMAN	ARJUNA	SAMUEL
NG	TERRY	L.
NGO	BRIAN	
NICHOLLS	TRACEY	
NIELSEN	CHRISTOPHER	LEE
NIGAM	SONYA	
NOROSKY	SUZANNE	VICTORIA
NORRIS	DEBORAH	ANN
NORTON	THOMAS	HENRY JOCELYN
O'BILLOVICH	ROBERT	GEORGE
OCHMANEK JR	EDWIN	JOSEPH
O'HARA	SHANNON	DANIELLE
OKADA	YOSHINORI	
OLVER	GERALD	BOYD
OTT	STEFANIE	J.
OWER	KATHERINE	MARY
OZIER	JOYCE	RUTH
PACEY	ANN	JEANETTE
PAGE	ANTHONY	F.
PALFELT	MARY	CHRISTINA
PALMER	BRENDAN	KEEGAN HART

Last name	First name	Middle name/initials
PALMER	CHRISTOPHER	JOHN
PARDON	JEREMY	LEE
PARK	JONG	JIN
PARR	CATHERINE	A.
PARSELL	YOSHIMI	K.
PASKES	TOBY	
PASRICHA	ADRIAN	
PAULSON POPPEL	DIANA	LEE
PAWLAK	KONRAD	
PENNER	JARED	DEAN
PENNER	MITCHELL	JON
PERRON	ALBERT	
PETELIN	FRANCESCA	
PETERKIN	ALLAN	DAVID
PETERS	CLAYTON	GEORGE
PETERSON	BRUCE	WESLEY
PETTETT	SARAH	LAUREN
PFENNINGER	PETER	MARKUS
PHILIPPS	EMMA	LOUISE
PIEPER	MAURITS	BENJAMIN
PINDOLIA	HANSABEN	SURESH
PINDOLIA	SURESH	VISHRAM
PLAATS	NANCY	JEAN VANDER
POND	ALEXANDRA	
POND	DARREN	
POND	HEATHER	R.
POND	JOSHUA	
POWELL	JAMES	JOHN
PRASAD	TARA	
PRAZAK	ALENA	
PRESCOTT	HELKE	HANNA-MARIE
PRYCE	TOMOTHY	DENZIL
PUSTELNIK	TOM	CLAUS
RAAB	EVELYN	ESTELLE
RABOLINI	MARIS	GAVZY
RADULOVICH	DONNA	HELEN
RAGAN	MARK	ADAIR
RAMABADRAN	SHIVKUMAR	
RATTLEY	IRIS	IZUMI
RAYBURG	SCOTT	CHRISTOPHER
REES	MARY	ANN
REEVES	LESLEY	ANNE
REGAZZONI	FRANCO	ROBERTO
REICHOW	DENISE	
RENAUD	HAVEN	FRANCIS
RICHTER III	OTTO	FRANK
RICKLIN	DANIEL	
RICKLIN-LICHSTEINER	SALOME	K.
RINALDI	RENE	JEAN
ROBERT	JUDITH	PATRICIA
ROBERTS	APRIL	KATHRYN
ROBERTS	DIANE	GAYLE
ROBERTS	JOHN	HOWELL
ROBINSON	DAVID	R.
ROGAN	MARY	ELIZABETH
ROGERS	HELENA	MARTINA
ROMAN	DANIELLE	JOLI
ROMASCHIN	VERONICA	ALEXANDRA
ROOT	CHRISTOPHER	DUANE
ROUBICHOU	GERARD	
ROWLAND	MICHAEL	PELLMAN
RUSNOCK	PAUL	HERBERT
RUTIMANN	BERNHARDT	HANS
SAKAMOTO	MICHIAKI	
SAKATCH	GLORIA	JEAN
SAKURAI	HIKARI	
SALM	CARSTEN	WALTER WILLI
SANGUINETI	CARLA	ROMANA
SANHEDRAI	TOVI	SISLEY C.
SANTARELLI	JEREMIAS	
SARA-KENNEDY	RACHAEL	
SARNO	KURT	DAVID
SAUNDERS	JEREMIAH	ALLEN DONALD
SAUNDERS	JUDITH	MARLA

Last name	First name	Middle name/initials
SCHMID	ANDREAS	FRANCIS
SCHMID	BRENDA	ELFRIEDE
SCHUMACHER	JENNIFER	LYNN
SCHUTZ	NATASSIA	ANNE
SCHUTZ	NICHOLAS	FRANCOIS
SCOTT	KIMBERLY	ANN
SERIREONGRITH	JANNAWEE	RATANAKUL
SERIREONGRITH	PECHAPAT	RATANAKUL
SEVENS	HILDE	HELENA JAN
SEWELL	BERYL	M.
SHARPE	CHRISTOPHER	DAVID ZACHARIAH
SHAW	STAN	TERRY
SHEPARD	BEVERLY	JANE
SHEPARD	ROBERT	KIGHT
SHIMIZU	SARA	STEPHANIE
SHINTAKU	YASUKO	
SHOUCAIR JR	PERLEY	WILLIAM
SHUBART	TIRA	
SIEMENS	RACHEL	L.
SISSONS	JENNIFER	ANN
SIZEMORE	EAMON	ROEL
SJOGREN	PAR	L.
SKOLNICK	BETTY	PINTO
SLYKE	JEFFREY	CHARLES VAN
SMALT	FLEUR	
SMEETS	VALERIE	DORINE MARIA
SNOEK	WIEKE	GABRIELLA MARIA
SOLOMON	SONIA	ANNA
SOULE	GREGORY	STEPHEN
SPITZER	CARL	PHILIP
SPITZER	KIMBERLY	GRACE
SPITZER	MIRIAM	
SRIPATANASAKUL	LILY	
STAHELIN	ELISABETH	MAGDALENA
STEFANELLI	MARIA	CATERINA
STEVENSON	JAMES	ALEXANDER
STILLER	RODNEY	KEVIN
STOCKS	KATHLEEN	ELLEN
STRAIGHT	BRUCE	GEORGE
STREBEL	MAX	ALLAN
STRIEPEN	CATHERINE	
SUGIMOTO	SACHIKO	
SUGIMOTO	TSUYOSHI	
SUHAN	ZACHARY	RYLAND
SUNG	TAI	KUAN
SURETTE	ANNE	VINCENT
SUTCLIFFE	HENRY	LEE
SUTER	CECILE	ANDREA
TAGUCHI	SACHIKO	
TAN	LAY-TING	
TAYLOR	FAITH	BEATRICE
TEMPLE	CHRISTOPHER	VAN KIRK
TEMPLE	CHRISTOPHER	VAN KIRK
TEMPLE	JOANNA	
TEMPLE	JOANNA	
TENG	JESSICA	TSU NING
TESSIER	OLIVIER	
THOMAS	LESLEY	JOYCE
THOMSON	BETTINA	JANE
THRANE-STEEN	CORNELIA	
TIN	ANN	YAN
TOYOOKA	TOMOKA	
TUAZON	MARIA	CECILIA DEVILLERES
TUITE	THERESA	MARY PATRICIA
TURNBILL	HEATH	McGREGOR
TYSOE	MYRA	LEIPSIGER
UHE	GEORGE	
UN	RICKY	MAN PAN
UNC	ADRIAN	
URBAIN	OLIVER	J.
VALA	DARLA	LYNN
VALCOURT	TERRI	LYNN
VAN DE VALL	PRERNA	BANG
VAN SLOBBE	HANNEKE	WILLEMIJN

Last name	First name	Middle name/initials
VEENHOF	WILLIAM	NICHOLAS
VEMURY	SASTRY	ANANTA VENDANTAM PRAKASH
VERBRUGGEN	LYNN	KLARA ANN
VIRTUSIO	QUEENY	LADRAN
WAAL	CHERYL	L.
WACKERNAGEL	BARBARA	ELISABETH
WACKERNAGEL	WILLIAM	BEAT
WADA	MASAKO	
WADA	OSAMU	
WADA	TAKASHI	
WALSH	CHRISTOPHER	DAMISN ST. JOHN
WALSH	JACK	WILLIAM
WANG	ZHIQIANG	
WANG	ZHOU	
WARD	COLLEEN	ANN
WARING	CHARLES	F.
WARMAN	ANDREA	CLAIRE
WAXMAN	MARIE	KIERAN
WEBER	ZOE	ALEXANDER
WEINBERG	LEAH	KAREN
WENDT	MARTHA	ROSEMARY
WEST	CALUM	
WHITESIDE	AARON	JOSEPH
WHITFORD	DAVID	LEONARD
WHITTINGTON	MEGAN	TATIANA
WIESE	JAMES	LEWIS
WIGDERSON	OWEN	MATTHEWS
WILDER	JUERGEN	
WILLIAMSON	RUARAIDH	J.
WILSON	CAROL	RICKER
WITWUTISAK	NANTIYA	
WIXEY	DAVID	FRASER
WIXEY	LESLEY	ELLEN
WOLLEB	ANDREAS	
WONG	JOHNNY	
WONG	MADELINE	CICI
WOO	CHARLES	CHANG HSIEN
WOOD	DOUGLAS	BRYANT
WOOD	JOLAYNE	MARELYN
WOODRUFF	ANDREW	HARLEY
WOODS	MICHAEL	D.
WOODWARD	AMBER	EMILY BAIN
WORONOV	TERRY	ELLEN
WRIGHT	CAROL	DAY
WU	JENNY	PEI YUN
YANG	QINGZHENG	
YANG	STANLEY	HONGSHUIUNG
YOON	JAEHEE	
YORK	BRUCE	J.
YOUNAN	CINDY	RAFIK
YOUNG	SARAH	MAGILL
ZAREMBA	JOANNA	KRISTINA
ZHANG	E-E	
ZHAVEN	GEORGE	ANTONIO
ZUIDHOF	JENNIFER	ANNE

Dated: August 7, 2019.

Diane Costello,

Manager Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2019–17498 Filed 8–14–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0768]

Agency Information Collection Activity Under OMB Review: Joint Application for Comprehensive Assistance and Support Services for Family Caregivers

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected

cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 16, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0768'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov* Please refer to ''OMB Control No. 2900–0768'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Joint Application for Comprehensive Assistance and Support Services for Family Caregivers (VA Form 10–10CG).

OMB Control Number: 2900–0768.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: Public Law (Pub. L.) 111–163, Caregivers and Veterans Omnibus Health Services Act of 2010 amended title 38 United States Code Chapter 17 by adding a new section, 1720G, ''Assistance and Support Services for Caregivers.'' Section 1720G requires the Department of Veterans Affairs (VA) to develop a Program of Comprehensive Assistance and Support Services for Family Caregivers. Under the law, primary family caregivers may be eligible to receive a stipend, access to health care coverage, mental health counseling, comprehensive caregiver education and training and expanded respite services. Caregivers also may be eligible for travel benefits when they accompany the Veteran for care or attending training.

In order to administer these benefits to caregivers, it is necessary that the VA receive information about the nature of benefit being sought and the persons who will be serving as caregivers and receiving benefits. The information collected will be used to determine if a post-9/11 Veteran or active duty service member undergoing medical discharge qualifies for Caregiver Support Services and whether the individuals designated to serve as primary or secondary family caregivers meet VA's criteria for these roles.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 23640 on May 22, 2019, page 23640.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 16,500.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–17497 Filed 8–14–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 28; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 190226166–9166–01]

RIN 0648–BI89

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 28

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

ACTION: Proposed rule; request for comments.

SUMMARY: In Amendment 28 to the Pacific Coast Groundfish Fishery Management Plan, NMFS proposes changes to closed areas that affect commercial vessels fishing with bottom contacting gear in Federal waters off of Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan. The proposed action would establish new and revised areas closed to bottom trawling to conserve and protect Pacific coast groundfish essential fish habitat, and re-open areas that were closed to bottom trawling to rebuild previously-overfished groundfish stocks. Combined, these two changes are anticipated to increase protections for groundfish essential fish habitat and provide additional flexibility to participants fishing with bottom trawl gear in the groundfish trawl rationalization program. Amendment 28 would also close deep-water areas off the coast of California to bottom contacting gear to protect deep-water habitats, including deep-sea corals, under fishery management plan discretionary provisions in the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments on this proposed rule must be received on or before September 16, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0039, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0039,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Hanshew, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA 98115.

Instructions: 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Information relevant to Amendment 28, which includes a draft Environmental Impact Statement, a regulatory impact review, and a Regulatory Flexibility Act certification are available for public review during business hours at the NMFS West Coast Regional Office at 7600 Sand Point Way NE, Seattle, WA 98115, or by requesting them via phone or the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. Copies of additional reports referred to in this document may also be obtained from the Pacific Fishery Management Council. These documents are also available at the Council's website at *http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/.* Additional background documents are available at the NMFS West Coast Region website at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.*

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, phone: 206–526–6147, or email: *Gretchen.Hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Background
- Goals and Objectives
- Revisions to EFH Conservation Areas
- Changes to Fishery Management Measures
- Discretionary Management Measures To Protect Deep-Water Habitats, Including Deep-Sea Corals
- Regulatory Changes

Classification

Background

This action would implement management measures from Amendment 28 to the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) deemed the proposed regulations consistent with and necessary to implement Amendment 28 in a June 3, 2019, letter from Council Chairman Phil Anderson to Regional Administrator Barry Thom. The Notice of Availability for Amendment 28 published on June 11, 2019, (84 FR 27072) and describes details of FMP changes relating to this action. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), we are required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The Magnuson-Stevens Act permits us to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, we must defer to the Council's policy choices. We are seeking comment on the Council's proposed measures in Amendment 28.

Through Amendment 28, the Council proposes to augment existing essential fish habitat (EFH) protection measures, reopen historically important fishing grounds, and protect deep-water habitats, including deep-sea corals. The Magnuson-Stevens Act regulations recommend that councils periodically review the EFH provisions of FMPs and revise or amend as warranted, based on the available information. The Council began its review of EFH components to comply with these requirements, and conducted its review of EFH from 2010 through 2014. The Council initiated Amendment 28 in 2014 after it determined that new information warranted considering changes to the EFH components in the FMP. In 2014, the Council was also considering reopening a year-round bottom trawl closure, known as the trawl rockfish conservation area, because of the successes of the trawl rationalization program and the positive stock status trajectories of rebuilding stocks. Prior to detailed consideration of changes for either purpose, the Council determined it was important to consider revisions to fishery management measures in conjunction with EFH components because of the overlap between the two actions. The Council also determined that deep-water habitats, including deep-sea corals in areas of the exclusive economic zone (EEZ) that were not designated EFH warranted protection, and recommended closures to certain types of fishing activities using

discretionary authority under the Magnuson-Stevens Act. In addition to FMP changes that directly impact fishing activity, Amendment 28 also revises the FMP by updating the descriptions of EFH designated in 2006 under Amendment 19 to the Pacific Coast Groundfish FMP, description of major prey species, and fishing and non-fishing impacts evaluation.

Goals and Objectives

Amendment 28 was developed over several years. The Council established three goals and used nine objectives to guide development of this action. Goal 1 was to minimize to the extent practicable the effects of fishing on EFH. Goal 2 was to re-evaluate the use of closed areas as a fishery management tool in the post-rationalization fishery. Goal 3 was to protect deep-sea habitats, including corals, from the effects of prospective fishing.

The nine objectives map to one or more of the Amendment's three goals and provide more guidance on achieving each goal. The primary objective for goal 1 is identifying new data sources upon which to base habitat protection measures. The Council also considered the five objectives of Amendment 19, which include protecting a diversity of habitat types, protecting a range of habitat types associated with the 90+ species in the FMP, prioritizing protection of pristine habitats, dispersing socioeconomic effects, and fostering comparative scientific research. The primary objective for goal 2 is to transition from depth-based closures to individual accountability of the Shorebased Individual Fishing Quota (IFQ) Program as the primary catch control tool. This will better meet the utilization goals of the FMP, achieve optimum yield, and allow for improvements in economic efficiency. The primary objective for goal 3 is to conserve and protect pristine habitats, including deep-sea coral, which are outside of designated EFH.

Revisions to EFH Conservation Areas

The Magnuson-Stevens Act requires that fishery management plans evaluate and minimize, to the extent practicable, the adverse effects of fishing on EFH. The evaluation should consider the effects of each fishing activity on each type of habitat found within EFH. Councils must prevent, mitigate, or minimize any adverse effects from fishing on EFH, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature. For this discussion, we refer to actions that prevent, mitigate, or minimize adverse effects on EFH as habitat management. After completing its periodic review, the Council decided there was new information to warrant consideration of changes to habitat management within the existing habitat conservation framework in the FMP.

To evaluate the adverse effects of fishing on EFH, the Council adopted a comprehensive updated data set, including information gathered during the EFH five-year review. The data set included habitat types and their geographic distribution, probabilities of groundfish species occupying that habitat, and common threats to habitat types. In 2013, the Council published the data set and solicited public input on the types of changes that would minimize impacts of fishing to EFH, including rationale supported by science and explanations of practicability.

The Council received proposals for habitat management changes between 2013 and 2016. Proposals focused on changes to the primary habitat management tool; EFH conservation areas. Proposals identified new closed areas and relatively minor adjustments to existing management areas through input from ecosystem and habitat scientists, fishermen, environmental groups, and the public. Because this process resulted in so many potential areas and combinations of areas, the Council appointed an ad hoc committee to evaluate proposals for technical merit and consistency with the goals and objectives of Amendment 28. After initial screening and public comment, the Council selected all or part of several proposals and developed suites of potential EFH conservation areas (*e.g.,* areas to close and areas to reopen). These suites formed the preliminary range of alternatives, adopted by the Council in September 2015, that would undergo more detailed analysis and review during Council meetings over the next several years. After periodic analytical updates and consideration of extensive public comment, the Council, in April 2018, adopted a final preferred alternative that made coastwide changes to habitat management.

The Council's final preferred alternative and a brief description of the Council's rationale for its preferences are included below. For a thorough discussion of the other alternatives considered and the potential impacts from those alternatives, please see Chapters 2, 4, and 5 of the Draft Environmental Impact State (DEIS). Collectively, descriptions of changes to habitat management, including maps of closed areas, can be found in Chapter 2 of the DEIS. Coordinates defining the Council's preferred alternative can be found in Appendix C3 of the FMP.

This rule proposes to approve all of the Council's recommendations for habitat management. Coastwide, the Council recommends an additional closure of over 12,000 square miles (31,000 square km) of the EEZ and re-opening over 200 square miles (518 square km) of the EEZ to bottom trawl gear, which adversely affects groundfish EFH. The newly recommended closures would protect a variety of ocean floor types (substrates) designated as groundfish EFH, and include areas designated as habitat areas of particular concern. In particular, closed areas would protect submarine canyons, seamounts, methane seeps, deep-sea corals as well as stationary three-dimensional invertebrates like sponges and corals. These substrates are associated with groundfish. For example, statistical analysis of underwater video research indicates that groundfish are much more likely to be seen in areas with sponges than without. Revisions to existing EFH conservation areas expand closures to protect important habitat features, but reopen habitats with lower sensitivity and faster recovery to disturbance. Impacts to fishing communities are anticipated to be minimal, because very little fishing effort occurs in the areas to be closed (less than 2 percent of the total groundfish landings and revenues on either a coastwide or port-group level). Overall, the Council's recommendation, in combination with existing habitat management measures that remain unchanged, minimizes the adverse effects of fishing on groundfish EFH while mitigating negative socioeconomic effects to fishing communities.

The Council recommended no additional habitat management measures within the tribal usual and accustomed (U&A) fishing areas off the Washington coast. Several areas, however, were permanently closed to bottom trawl within the U&A fishing areas by Amendment 19 in 2006. The Council articulated several reasons for its decision to recommend no additional measures in the tribal U&A. First, tribes' treaty fishing rights are tied to place, and spatial habitat management could impede the ability of tribes to exercise their treaty fishing rights. The Council acknowledges efforts by NMFS and the tribes to engage in consultation regarding further habitat management within the U&A fishing area. Second, there is ongoing litigation regarding the boundaries of the tribal U&A fishing areas, which increases uncertainty in

how habitat management in the area would affect the tribes' ability to exercise their treaty fishing rights. Given these factors, the Council excluded the U&A fishing areas from its preferred suite of habitat management measures eliminating direct effects to tribal fishing in the U&A fishing areas. There is a possibility of indirect effects to tribal fisheries in the form of displaced non-tribal fishing shifting into the U&A but those impacts are anticipated to be minimal. Changes to habitat management adjacent to the U&A fishing areas were limited in size (less than 50 square miles (129 square km), total). There is very little non-tribal fishing occurring in or being displaced from those areas that will experience changes in habitat management.

Changes to Fishery Management Measures

One of the three primary goals of the FMP is utilization of fishery resources within the constraints of conservation objectives. This goal directly relates to National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The Council is obliged to balance the conflicting need to restrict fishing to protect the resource with providing sufficient allowable catch to sustain the fleet and coastal communities. The Council implemented a trawl rationalization program for the Pacific Coast groundfish fishery in 2011. The Trawl Rationalization Program replaced trip and landing limits in the Pacific Coast Groundfish fishery with an individual fishing quota (IFQ) management system and increased monitoring to 100 percent of trips and landings. The program left in place many of the spatial fishery management measures and gear restrictions from the trip limit era as a precaution to prevent inadvertent high catches of overfished species and lower risk of premature closure of an IFQ fishing year. With the individual accountability of the IFQ system, estimates of mortality became more precise, regulatory discard decreased, catches of overfished and protected species decreased, and trawl revenue increased. In April 2013, the Council recommended relieving some of these restrictions imposed during the trip limit era by reopening some areas that were closed to bottom trawling through inseason action. After NMFS' partial disapproval of these recommendations the Council undertook a process to consider how permanently reopening these areas closed to bottom trawling could impact EFH.

Since September 2014, the Council has considered changes to both habitat measures and bottom trawl fishery management measures as part of Amendment 28. As described above in section ''Revisions to EFH Conservation Areas'', a preliminary range of alternatives was adopted by the Council for public review in September 2015, with subsequent opportunities for comment over the next few years. The Council recommended, in April 2018, changes to both EFH conservation areas and fishery management measures. The Council recommended re-opening areas to bottom trawl gear consistent with the economic and utilization objectives described in section 2.1 of the FMP.

The Council's final preferred alternative and a brief description of the Council's rationale for its preferences are included below. For a thorough discussion of the other alternatives considered and the potential impacts from those alternatives, please see Chapters 2, 4, and 5 of the DEIS. Maps can be found in Chapter 2 of the DEIS.

The Council recommended reopening a depth-based bottom trawl closure that has been in place coastwide since 2002. This closure, referred to in regulation as the groundfish trawl Rockfish Conservation Area (trawl RCA), prohibited fishing with trawl gear to reduce impacts to species that were overfished at that time; Pacific ocean perch and darkblotched rockfish. The trawl RCA covers an area of approximately 4,000 square miles (10,360 square km) extending between the U.S.-Canada border and the U.S.-Mexico border and the depths of approximately 100 fathoms (183 m) and 200 fathoms (366 m). North of 40°10′ N lat. the trawl RCA is closed to groundfish bottom trawl gear and south of 40°10′ N lat. it is closed to all groundfish trawl gear (bottom and midwater trawl). Amendment 28 would reopen the trawl RCA to bottom trawling off of Oregon and California, an area of over 2,000 square miles (5,180 square km). The reopening of the trawl RCA does not open areas otherwise closed to bottom trawling; *e.g.,* habitat measures and state waters closed to bottom trawling that overlap with the trawl RCA would remain closed to bottom trawling. The Council recommended this change because of the success of the trawl rationalization program, established in 2011, at reducing bycatch of target and non-target stocks, including overfished and protected species. Since implementation, five of the seven previously overfished stocks are now rebuilt. The areas proposed to reopen were historically important fishing grounds, and it is anticipated that groundfish fishermen will have more flexibility and opportunities to improve the efficiency of their operations, which will benefit coastal communities. Additionally, the areas to be reopened are predominantly substrates that are the most resilient to disturbance and, when combined with the protections to EFH proposed in this rule, adverse effects to designated groundfish EFH will be minimized to the extent practicable. When considered together (EFH conservation areas and the trawl RCA overlap in places), changes to the coastwide network of EFH conservation areas and the reopening of the trawl RCA off Oregon and California would result in new bottom trawl closures totaling 13,151 square miles (34,061 square km) and reopening of 2,958 square miles (7,661 square km).

Reopening an area that has not been fished with bottom trawl gear for over 15 years is not without risk. The Council recommended, as part of this proposed rule, a new discrete spatial management tool that is more flexible and responsive than the trawl RCA. Block Area Closures (BACs) could be used to restrict groundfish bottom trawling within any portion of the EEZ off Oregon and California, in areas bounded by specific latitudes and depths, to meet various fishery management goals. These goals would include reducing bycatch of protected species and preventing overfishing. No BACs would be implemented with this proposed rule. BACs cannot be used to close an area to any type of fishing other than groundfish bottom trawling. This rule would allow NMFS to close or reopen BACs pre-season or in-season, consistent with Council recommendations. The approach would be consistent with existing ''routine inseason'' frameworks already in the FMP and regulations. NMFS would implement changes to BACs through inseason action via a single **Federal Register** notice, if good cause exists under the Administrative Procedure Act to waive notice and comment. The following examples are hypothetical and illustrate possible uses of BACs, and are not limiting. BACs may be used in scenarios not discussed in these examples. Example 1: Best estimates indicate catches of an IFQ species have exceeded the annual trawl allocation for that species. The Council could consider using BACs to close areas (bounded by depth and latitude, off Oregon and California) where that

species has been caught with bottom trawl gear in recent years. Example 2: Best estimates indicate that incidental salmon catch with bottom trawl gear is projected to exceed the thresholds in the applicable incidental take statement. The Council could consider using BACs to close areas where salmon have been caught with bottom trawl in recent years.

When deciding whether to use BACs, the Council will consider environmental impacts, including economic impacts, and public comment via the Council process. Depending on the circumstances, the Council may close areas for a short period of time, such as the remainder of the fishing year, or leave it closed for a longer period of time, such as until reopened by a subsequent action. The Council may recommend that NMFS close one or more BACs and the size of the BACs can vary. A **Federal Register** notice will announce boundaries (described with coordinates in codified regulations) of one or more BACs, within which groundfish bottom trawling would be prohibited for a period of time. The period of time that the closure would be in effect, as well as the Council's purpose and rationale, will be also described in the **Federal Register** notice. NMFS would announce the boundaries and duration of the BACs through public notices and on the West Coast Region website (see **ADDRESSES**).

The Council decided to take no action regarding bottom trawl closures off the Washington coast. The Council's rationale for this decision is similar to those discussed above in section ''Revisions to EFH Conservation Areas'' for not establishing new habitat management within the tribal U&A fishing areas. Outside of the tribal U&A fishing areas, the Council was concerned with potential impacts to yelloweye rockfish of reopening the trawl RCA. Yelloweye rockfish are managed under a rebuilding plan, and are more concentrated off the Washington coast compared to Oregon and California waters. The Council was also concerned about the indirect effects of reopening these areas to non-groundfish fisheries (*e.g.,* Dungeness crab pot fishing). Crabbers set their pot gear inside the bottom trawl closure, and if it is reopened and fished with bottom trawl gear, the gears may interact, causing physical harm to gears and possibly economic harm to either user group. The Council also discussed the value of the trawl RCA off Washington in providing protection for protected species and other species that are not overfished. Given these factors, the Council made no changes to the current bottom trawl closure off the coast of Washington. The existing trawl RCA will remain in effect off Washington, which means that fishing with bottom trawl gear and transiting without bottom trawl gear stowed is prohibited within the boundaries of the trawl RCA. The Council will still have the same ability as they do now to consider changes to the boundaries of the trawl RCA as a routine inseason action, consistent with the existing FMP and regulatory framework.

Discretionary Management Measures To Protect Deep-Water Habitats, Including Deep-Sea Corals

During the last EFH amendment (Amendment 19, 2006) the Council recommended gear restrictions for the entire EEZ, including areas within the EEZ that were outside of designated EFH. NMFS disapproved the gear restrictions outside of designated EFH because there was insufficient information demonstrating that those areas were important for groundfish ecology and fisheries and warranted protection under EFH provisions. In the partial disapproval, NMFS pointed out that the Magnuson-Stevens Act reauthorizations under development at that time contained expanded authorities that could provide authority to make such closures outside of designated EFH in the future. The Amendment 19 final rule provides additional detail on this partial disapproval (May 11, 2006; 71 FR 27408). Reauthorization of the Magnuson-Stevens Act in 2007 added discretionary authority for Councils to restrict fishing activities, protect deep-sea corals and measures to meet other ecological goals and objectives.

The Council's final preferred alternative and a brief description of the Council's rationale for its preferences are included below. For a thorough discussion of this alternative and the potential impacts, please see Chapters 2 and 4 of the DEIS. Maps can be found in Chapter 2 of the DEIS.

The Council recommended using Magnuson-Stevens Act discretionary authority to close deep water off California to certain gear types, creating a Discretionary Conservation Area, or DCA. Deep-sea habitats are sensitive to disturbance and slow to recover. Therefore, the closure would apply not just to vessels fishing with bottom trawl gear, but to any vessel fishing any gear designed to make contact with the bottom. The definition of bottom contact gear is not being revised in this rule and includes, but is not limited to, bottom trawl, dredge, and fixed gears like longline, trap or pot, set net, and stationary hook-and-line gears. This closure covers over 123,000 square miles (318,569 square km), and includes the entire EEZ south of Mendocino Ridge seaward of approximately 1,900 fathoms (3,500 m). The Council discussed how it values the role of deep-sea habitats in trapping greenhouse gases, slowing the rate of climate change, and providing nutrients (through upwelling) that fuel fisheries. Currently, there is no known bottom contact fishing activities occurring there. This proposed rule would prevent prospective fishing activities that could damage deep-sea ocean floor and sensitive deep-sea coral habitats. Similar to other conservation areas, the Council could allow future prospective fishing activities with bottom contacting gear in this area via a groundfish exempted fishing permit.

Regulatory Changes

This rule proposes two categories of regulatory changes. The first includes measures to implement the Council's recommendation. The second includes minor technical corrections of related regulations. The proposed regulations also update cross-references and definitions as needed.

To implement the Council's recommendation, all new closed areas are defined and described in subpart C with latitude and longitude coordinates and other regulatory boundaries. NMFS is particularly interested in receiving comments on ease of compliance with certain boundaries that do not lend themselves to long, straight lines, such as EFH conservation areas that have portions of their boundaries defined by the state water line, such as the Arago Reef and Rogue River Reef EFH conservation areas. Although fishery participants are familiar with the state water boundary line, NMFS remains concerned that complex boundary lines not defined with latitude and longitude lines may be difficult for fishery participants to navigate, and therefore more likely to lead to prohibited area violations.

NMFS is also particularly interested in receiving comments on the Grays Canyon EFH conservation area, an existing EFH conservation area revised by this action, and how its boundaries relate to the Quinault Indian Nation's usual and accustomed fishing area (Quinault U&A). The Council's April 2018 motion that adopted the northern expansion of this EFH conservation area referred to an early proposal submitted in the Council process, and stated that the expansion should also include the area seaward of the adjudicated western boundary for the Quinault U&A. At the

time the Council adopted the motion, the United States District Court for the Western District of Washington had only recently issued an order setting forth the revised western boundary of the Quinault U&A in *United States* v. *Washington,* No. C70–9213RSM (W.D. Wash. March 5, 2018) (Order Regarding Boundaries of Quinault and Quileute U&As). The Council motion referenced an early proposed boundary for the area and depicted the prior western boundary for the Quinault U&A, rather than the 2018 adjudicated western boundary. The motion also articulated specific latitude and longitude coordinates for the EFH conservation area. At the September 2018 Council meeting, NMFS stated its intention to propose a shoreward boundary of the EFH conservation area that would be consistent with the 2018 adjudicated western boundary. Upon further examination of coordinates described in the Council motion and the location of the 2018 adjudicated western boundary of the Quinault U&A, the coordinates of the Grays Canyon EFH conservation area northern expansion are approximately 2 miles (3.6 km) farther offshore than the western boundary of the Quinault U&A, which mirrors the coastline 30 nautical miles off the coast of central Washington. NMFS did not have explicit direction from the Council on how to connect the coordinates of the EFH conservation area in the Council motion to the 2018 adjudicated western boundary of the Quinault U&A, and would have had to make assumptions about how to make the connection. In addition, the Council motion describes and depicts a straight line shoreward boundary for the EFH conservation area expansion defined with coordinates. Replacing that straight line boundary with the 2018 adjudicated western boundary for the Quinault U&A, which is not defined with coordinates, may create challenges for enforcement and compliance. After consulting with the Council, NMFS decided to propose regulations that use the latitude and longitude coordinates from the motion to define the Grays Canyon EFH conservation area northern expansion, rather than creating new coordinates to expand the EFH conservation area an additional approximately 2 miles (3.2 km) east to meet the 2018 adjudicated western boundary of the Quinault U&A.

The potential boundaries of future BACs already exist in subpart C. The existing procedures through which inseason action would implement these closures is also described in subpart C. The restrictions within closed areas that apply to specific gear types are described in subparts D through F.

The locations and descriptions of regulations that implement the Council's recommendations regarding Amendment 28 are described in greater detail in Table 1 below. To insure accuracy of EFH conservation area regulations at §§ 660.77 through 79, NMFS is publishing each section in its entirety, rather than only publishing new and revised EFH conservation areas. For transparency, Table 2 categorizes every EFH conservation area as either new, revised, or re-published.

TABLE 1—LOCATION AND DESCRIPTION OF SUBSTANTIVE REGULATORY CHANGES IMPLEMENTING AMENDMENT 28

Section, subpart	Regulatory change	Description
§ 660.11, subpart C	Define the DCA and BACs	Add definition of the DCA and mention BACs as a type of groundfish conservation area.
§ 660.12, subpart C	Add prohibitions for DCAs	Prohibit use of bottom contacting gear in the DCA.
§ 660.60, subpart C	BACs are a routine management measure	Designate BACs as a routine management measure that can be changed inseason.
§ 660.71 through § 660.75, subpart C.	Revise introductory text	Boundary lines that approximate depth contours are used for more than just RCAs, including gear restrictions and BACs.
§ 660.76, subpart C	Revise the boundary line approximating the 700 fm depth contour.	Revise the section title and revise coordinate at Spanish Canyon, South of Mars Cable, and Cabrillo Canyon.
§ 660.77 through § 660.79, subpart C.	Add new and revise existing EFH conservation areas off Washington, Oregon and California.	EFH conservation area not being revised are being re-published. See Table 2 for additional details.
§ 660.111, subpart D	Define BACs	Add definition of BACs.
§ 660.112, subpart D	Prohibitions for new EFH conservation areas	Update the lists of EFH conservation areas closed to bottom trawl and closed to bottom trawl except for demersal seine (off California).
§ 660.130, subpart D	Off Oregon and California, remove the trawl RCA and add BACs.	Revise regulations to no longer use the trawl RCA as a reference point for depth-based gear restrictions; remove the trawl RCA off Oregon and California; add BACs as a potential management measure.
§ 660.130, subpart D	Retain status quo depth restrictions for midwater trawl gear south of 40°10′ N lat.	Midwater trawl depth restrictions are moved to paragraph (c)(4). This replaces the restriction at 660.130 (e) that said "midwater trawl is prohibited within and shoreward of the trawl RCA" south of 40°10′ N lat.
Tables 1 (North) and 1 (South) to subpart D.	Remove trawl RCA off Oregon and California	Trawl RCA remains only north of 46°16′ N lat.; trawl RCA is removed from Table 1 (South) title.
§ 660.212 and § 660.312, subpart E.	Add reference to DCA prohibitions	Bottom contact gear restrictions within the new DCA apply to fixed gear, including longline and trap/pot gears.

TABLE 2—EFH CONSERVATION AREA CHANGES OFF WASHINGTON, OREGON, AND CALIFORNIA, INCLUDING NEWLY ADDED AREAS, EXISTING AREAS WITH REVISED BOUNDARIES, AND EXISTING AREAS RE-PUBLISHED WITHOUT SUBSTANTIVE CHANGES

Section & state	New	Revised	Re-published
§ 660.76—Coastwide	None	Seaward of the 700-fm (1,280-m) contour.	None.
§ 660.77—Washington	Quinault Canyon, Willapa Canyonhead, Willapa Deep.	Grays Canyon *	Olympic 2, Biogenic 1, Biogenic 2, Biogenic 3.
§ 660.78—Oregon	Astoria Deep, Garibaldi Reef North, Garibaldi Reef South, Hydrate Ridge, Arago Reef,* Rogue River Reef *.	Nehalem Bank/Shale Pile, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Bandon High Spot.	Thompson Seamount, Astoria Canyon, Siletz Deepwater, Deepwater off Coos Bay, President Jackson Seamount, Rogue Canyon.
§ 660.79—California	Brush Patch, Trinidad Canyon, Mad River Rough Patch, Samoa Deepwater, Navarro Canyon, The Football, Gobbler's Knob, Point Reyes Reef, Rittenburg Bank, Farallon Escarpment, Pescadero Reef, Pigeon Point Reef, Ascension Canyonhead, South of Davenport, West of Sobranes Point, La Cruz Canyon, West of Piedras Blancas, Southern California Bight.	Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal/Cochrane Bank, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, Potato Bank.	Tolo Bank, Point Arena North, Cordell Bank (50-fm (91-m) isobath), Half Moon Bay, Davidson Seamount, East San Lucia Bank, Point Conception, Harris Point, Harris Point Exception, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, Hidden Reef/Kidney Bank, Catalina Island, Santa Barbara, Cherry Bank, Cowcod EFHCA East.

* NMFS is specifically seeking public comments on these EFH conservation areas, as described above.

This rule also proposes minor technical corrections for regulations relating to commercial gear restrictions and closed areas throughout the groundfish regulations at 50 CFR part 660, subparts C through F. The only substantive changes to regulations under this category are to resolve internal inconsistencies within regulations and align them with past Council actions. All other changes are not substantive and include moving, removing, and adding cross-references to regulations to reduce redundancies, and clarifying prohibitions and management measures to reduce complexity and simplify language.

If the proposed regulations in this proposed rule are revised or corrected by other, separate rulemakings before these proposed regulations publish in the final rule, NMFS will update the final regulations for consistency and describe the changes from the proposed rule in the final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the FMP, Amendment 28 to the FMP, the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

This proposed rule has been preliminarily determined to be not significant for purposes of Executive Order (E.O.) 12866.

NMFS prepared a DEIS for this action, which addresses the requirements of the National Environmental Policy Act. The full suite of alternatives analyzed by the Council can be found on the NMFS website at *www.westcoast.fisheries.noaa.gov.* The DEIS examined the environmental impacts of EFH conservation area changes, re-opening of the trawl RCA, and deep-water fishing restrictions separately and cumulatively. Considering each of the three types of changes separately was warranted based on differing goals and objectives. Considering these changes cumulatively was necessary because of spatial overlap of different alternatives. A copy of the DEIS is available from NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

This proposed rule would directly affect businesses that operate in the commercial fishing industry (NAICS code 11411) operating with bottom trawl fishing gear in Federal waters of the West Coast. This rule would primarily affect businesses harvesting and selling groundfish, but may also affect small businesses harvesting and selling pink shrimp, ridgeback prawn, and sea cucumber caught with bottom trawl gear. For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

Limited entry groundfish vessels (trawl and non-trawl) are required to self-report size across all affiliated entities. All but one of the entities primarily involved in seafood harvest self-identified as small, and own 139 permits. In 2018, 58 vessels harvested groundfish with bottom trawl gear off of the West Coast. In 2018, 58 vessels harvested groundfish in the catch share program and would potentially benefit from some or all of the fishing area flexibility offered in the proposed rule. Vessels in California and Oregon are likely to experience the greatest benefits from reopening of the trawl RCA; 19 bottom trawl vessels landed in California in 2018, and 38 in Oregon, although many vessels fish in multiple states. The five bottom trawl vessels landing in Washington would still have access to expanded fishing opportunity in other states and thus still experience expected benefits from this rule.

Less information is available to NMFS regarding state-managed fisheries; therefore, business size is estimated based on available information. From 2011–2017, an annual average of 139 vessels landed non-groundfish species harvested with bottom trawl gear in state-managed fisheries. Average annual revenue from all species landed by the 139 vessels vary by state. The coastwide average revenue per vessel is less than half a million dollars. The estimates of average annual revenue indicate that these 139 businesses are small businesses, assuming no affiliation and with ownership interest unknown.

The proposed rule would close and reopen EFH conservation areas, which are closed areas to both goundfish and non-groundfish bottom trawl gear. The proposed rule would establish EFH conservation areas over 17,000 square miles (44,000 square km) of the EEZ. However, because some of those areas are already closed to bottom trawl gear by other fishery management measures and only a very small portion of these proposed closed areas are currently fished with bottom trawl gear for any species, we expect very little effort will be displaced by these closures. The groundfish areas to be closed contributed less than half a percent to revenues, coastwide. For non-groundfish, there is very little overlap of fishing areas and closures proposed by this rule. This rule is anticipated to have negligible effects to small businesses because of low overlap of closures with common bottom trawl fishing areas. This proposed rule would re-open to bottom trawl gear (both groundfish and non-groundfish) EFH conservation areas covering approximately 200 square miles (518 square km) of the EEZ. Changing areas fished or targeting strategies is optional, and up to the discretion of the operator. Some vessels may choose not to access reopened areas and thus would not be affected by reopened areas proposed by this rule. For vessels who do anticipate expanding operations into newly reopened areas, effects would be expected to be positive.

The proposed rule would reopen almost 3,000 square miles (7,800 square km) of the EEZ (*e.g.,* the trawl RCA) to groundfish bottom trawling. Areas to be opened represent a substantial increase in potential fishing grounds to active operations off the coasts of California and Oregon, and contributed up to 11 percent of coastwide revenue to the fishery prior to their closure in 2002. For the same reasons stated above, expanding operations into newly reopened areas is optional and the effects would be expected to be positive for vessels that choose to do so. The trawl RCA that is the subject of this action does not apply to non-groundfish trawl vessels and its reopening to groundfish trawl vessels is therefore not anticipated to have any direct effect on non-groundfish trawl fisheries.

The proposed rule would close over 123,000 square miles (318,569 square km) seaward of approximately 1,900 fathoms (3,500 m) to fishing with bottom contact gears. Currently, there is no known bottom contact fishing activities occurring there, and there would be no adverse economic impact on any small business.

In summary, this rule would not have an adverse economic impact on any small business. Any changes to coastwide revenue or pounds by the net of these closures and openings is not quantifiable; however, the impacts to small businesses operating in non-groundfish bottom trawl fisheries are anticipated to be negligible. The closures are not displacing much fishing activity and openings are anticipated to offer increased flexibility for active operations in terms of access to fishing areas. Therefore, NMFS expects this proposed rule would not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required and none has been prepared.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the proposed action. None of the provisions in this proposed rule apply to tribal vessels operating in tribal usual and accustomed fishing areas.

This proposed rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 29, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11, revise the definition of ''Conservation area(s),'' and add the definition of ''Exclusive Economic Zone or EEZ'' in alphabetical order to read as follows.

§ 660.11 General definitions.

* * * * *

Conservation area(s) means an enclosed geographic area defined by coordinates expressed in degrees latitude and longitude where NMFS may prohibit fishing with particular gear types. Conservation areas include Groundfish Conservation Areas (GCA), Essential Fish Habitat Conservation Areas (EFHCA) and Discretionary Conservation Areas (DCA).

(1) *Groundfish Conservation Area* or *GCA* means a conservation area created or modified and enforced to control catch of groundfish or protected species. Regulations at § 660.60(c)(3) describe the various purposes for which NMFS may implement certain types of GCAs through routine management measures. Regulations at § 660.70 further describe and define coordinates for certain GCAs, including: Yelloweye Rockfish Conservation Areas; Cowcod Conservation Areas; waters encircling the Farallon Islands; and waters encircling the Cordell Banks. GCAs also include depth-based closures bounded by lines approximating depth contours and lines of latitude, including Bycatch Reduction Areas or BRAs, Block Area Closures or BACs, and Rockfish Conservation Areas or RCAs, which may be closed to fishing with particular gear types. BRA, BAC, and RCA boundaries may change seasonally according to conservation needs. Regulations at §§ 660.71 through 660.74 define depth-based closure boundary lines with latitude/longitude coordinates. Regulations at § 660.11 describe commonly used geographic coordinates that define lines of latitude. Fishing prohibitions associated with GCAs are in addition to those associated with other conservation areas.

(i) *Block Area Closures* or *BACs* are defined at § 660.111.

(ii) *Bycatch Reduction Areas* or *BRAs* are conservation areas that apply to vessels using midwater groundfish trawl gear during the Pacific whiting primary season, as described at §§ 660.60(d) and 660.131(c).

(iii) *Cordell Banks* is defined at § 660.70.

(iv) *Cowcod Conservation Areas* are defined at § 660.70.

(v) *Farallon Islands* is defined at § 660.70.

(vi) *Rockfish Conservation Areas or RCAs.* RCA restrictions are detailed in subparts D through G of this part. RCAs may apply to a single gear type or to a group of gear types such as ''trawl RCAs'' or ''non-trawl RCAs.'' Specific latitude and longitude coordinates for RCA boundaries that approximate the depth contours selected for trawl, non-trawl, and recreational RCAs are provided in §§ 660.71 through 660.74. Also provided in §§ 660.71 through 660.74, are references to islands and rocks that serve as reference points for the RCAs.

(A) *Trawl (Limited Entry and Open Access Non-groundfish Trawl Gears) RCAs.* The trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates approximating depth contours. Boundaries for the limited entry trawl RCA throughout the year are provided in Table 1 (North) subpart D of this part. Boundaries for the open access non-groundfish trawl RCA throughout the year are provided in Table 3 (South) subpart F of this part. Boundaries of the trawl RCAs may be modified by NMFS inseason pursuant to § 660.60(c).

(B) *Non-Trawl (Limited Entry Fixed Gear and Open Access Non-trawl Gears) RCAs.* Non-trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates approximating depth contours. Boundaries for the non-trawl RCA throughout the year are provided in Table 2 (North) and Table 2 (South) of subpart E of this part, and Table 3 (North) and Table 3 (South) of subpart F of this part, and may be modified by NMFS inseason pursuant to § 660.60(c).

(C) *Recreational RCAs.* Recreational RCAs are closed areas intended to protect overfished rockfish species. Recreational RCAs may either have boundaries defined by general depth contours or boundaries defined by specific latitude and longitude coordinates approximating depth contours. Boundaries for the recreational RCAs throughout the year are provided in the text in subpart G of this part under each state (Washington, Oregon and California) and may be modified by NMFS inseason pursuant to § 660.60(c).

(vii) *Yelloweye Rockfish Conservation Areas* or *YRCAs* are defined at § 660.70.

(2) *Essential Fish Habitat Conservation Area* or *EFHCA* means an area created and enforced to contribute to the protection of groundfish essential fish habitat. Regulations at §§ 660.75 through 660.79 define EFHCA boundaries. Fishing prohibitions associated with EFHCAs, which are found at §§ 660.12, 660.112, 660.212, and 660.312, are in addition to those associated with other conservation areas.

(3) *Discretionary Conservation Area* or *DCA* is the area within the EEZ deeper than 3,500 m (1,914 fm) that is not designated as EFH, defined at § 660.75 with latitude and longitude coordinates. The DCA is closed to bottom contact gear for the reasons described under MSA Section 303(b), and contributes to the protection of deep-water habitats including deep-sea corals. Fishing prohibitions associated with DCAs, at § 660.12, are in addition to those associated with other conservation areas.

* * * * *

Exclusive Economic Zone or *EEZ* is defined at § 600.10. See also *Fishery management area* of this section.

* * * * *

■ 3. In § 660.12, add paragraphs (a)(16) through (18) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(16) Fish with bottom contact gear (defined at § 660.11) within the EEZ in the following EFHCAs (defined at §§ 660.78 and 660.79): Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara.

(17) Fish with bottom contact gear (defined at § 660.11), or any other gear that is deployed deeper than 500-fm (914-m), within the Davidson Seamount EFHCA (defined at § 660.79).

(18) Fish with bottom contact gear, defined at § 660.11, in the DCA, defined at § 660.11.

* * * * *

■ 4. In § 660.60 revise introductory text paragraph (c) and paragraph (c)(3)(i) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) *Routine management measures.* Catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the Administrative Procedure Act (APA) to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. Routine management measures that may be revised during the fishing year, via this process, are implemented in paragraph (h) of this section, and in subparts C through G of this part, including Tables 1a through 1c, and 2a through 2c to subpart C of this part, Tables 1 (North) and 1 (South) of subpart D of this part, Tables 2 (North) and 2 (South) of subpart E of this part, and Tables 3 (North) and 3 (South) of subpart F of this part. Most trip, bag, and size limits, and some Groundfish Conservation Area closures in the groundfish fishery have been designated ''routine,'' which means they may be changed rapidly after a single Council meeting. Council meetings are held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register** pursuant to the requirements of the APA. Changes to trip limits are effective at the times stated in the **Federal Register**. Once a trip limit change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect. The following catch restrictions have been designated as routine:

* * * * *

(3) * * *

(i) *Depth-based management measures.* Depth-based management measures, particularly closed areas known as Groundfish Conservation Areas, defined in § 660.11, include RCAs, BRAs, and BACs, and may be implemented in any fishery sector that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at §§ 660.70 through 660.74. Depth-based management measures and closed areas may be used for the following conservation objectives: To protect and rebuild overfished stocks; to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species; or to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery. Depth-based management measures and closed areas may be used for the following economic objectives: To extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the

recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

(A) *Rockfish Conservation Areas.* RCAs, as defined at § 660.11, may be modified as routine action for vessels using trawl gear (off Washington), non-trawl gear (coastwide), or recreational gear (coastwide) consistent with the purposes described in paragraph (c)(3)(i) of this section.

(B) *Bycatch Reduction Areas.* BRAs may be implemented through automatic action in the Pacific whiting fishery consistent with paragraph (d)(1) of this section. BRAs may be implemented as routine management measures for vessels using midwater groundfish trawl gear consistent with the purposes described in paragraph (c)(3)(i) of this section.

(C) *Block Area Closures.* BACs, as defined at § 660.111, may be closed or reopened, off Oregon and California, for vessels using limited entry bottom trawl gear consistent with the purposes described in paragraph (c)(3)(i) of this section.

* * * * *

■ 5. Amend § 660.70 by:

■ a. Removing the introductory text, paragraphs (n), (o) and (r);

■ b. Redesignating paragraphs (a) through (m) as (b) through (n);

■ c. Adding new paragraphs (a) and (o).

The additions read as follows:

§ 660.70 Groundfish conservation areas.

(a) *General.* Groundfish conservation area (GCA) is defined in § 660.11. This section defines GCAs whose shapes are not exclusively defined by boundary lines approximating depth contours found in §§ 660.71 through 660.74 or commonly used geographic coordinates at § 660.11. Fishing activity that is prohibited or permitted within a particular GCA is detailed at subparts C through G of part 660.

* * * * *

(o) *Cowcod Conservation Areas.* The Cowcod Conservation Areas (CCAs) are two areas off the southern California coast intended to protect cowcod.

(1) *Western CCA.* The Western CCA is an area south of Point Conception defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(A) 33°50.00′ N lat., 119°30.00′ W long.;

(B) 33°50.00′ N lat., 118°50.00′ W long.;

(C) 32°20.00′ N lat., 118°50.00′ W long.;

(D) 32°20.00′ N lat., 119°37.00′ W long.;

(E) 33°00.00′ N lat., 119°37.00′ W long.;

(F) 33°00.00′ N lat., 119°53.00′ W long.;

(G) 33°33.00′ N lat., 119°53.00′ W long.;

(H) 33°33.00′ N lat., 119°30.00′ W long.;

and connecting back to 33°50.00′ N lat., 119°30.00′ W long.

(2) *Transit corridor.* The Western CCA transit corridor is bounded on the north by the latitude line at 33°00.50′ N lat., and bounded on the south by the latitude line at 32°59.50′ N lat.

(3) *Eastern CCA.* The Eastern CCA is an area west of San Diego defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(A) 32°42.00′ N lat., 118°02.00′ W long.;

(B) 32°42.00′ N lat., 117°50.00′ W long.;

(C) 32°36.70′ N lat., 117°50.00′ W long.;

(D) 32°30.00′ N lat., 117°53.50′ W long.;

(E) 32°30.00′ N lat., 118°02.00′ W long.;

and connecting back to 32°42.00′ N lat., 118°02.00′ W long.

* * * * *

■ 6. In § 660.71 revise the introductory text to read as follows:

§ 660.71 Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.

Boundaries for some GCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 10-fm (18-m) through 40-fm (73-m) depth contours.

* * * * *

■ 7. In § 660.72 revise the introductory text to read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

Boundaries for some GCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *

■ 8. In § 660.73 revise the introductory text to read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

Boundaries for some GCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *

■ 9. In § 660.74 revise the introductory text and paragraphs (l)(209) and (210) to read as follows:

§ 660.74 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

Boundaries for some GCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(l) * * *

(209) 34°27.00′ N lat., 120°42.61′ W long.;

(210) 34°19.08′ N lat., 120°31.21′ W long.;

* * * * *

■ 10. Amend § 660.76 by:

■ a. Revising the section heading and paragraphs (a) and (b);

■ b. Removing introductory text.

The revisions read as follows:

§ 660.76 Coastwide EFHCAs.

(a) *General.* EFHCAs are defined at § 660.11. The boundaries of areas designated as EFHCAs are defined by straight lines connecting a series of latitude and longitude coordinates and other regulatory boundaries. This paragraph provides coordinates outlining the boundaries of the coastwide EFHCA. Coordinates outlining the boundaries of EFHCAs off the coasts of Washington, Oregon, and California are provided in §§ 660.77, 660.78, and 660.79, respectively. Fishing activity that is prohibited or permitted within a particular EFHCA is detailed at subparts C through G of this part.

(b) *Seaward of the 700-fm (1280-m) contour.* This area includes all waters designated as EFH within the West Coast EEZ west of a line approximating the 700-fm (1280-m) depth contour which is defined by straight lines connecting all of the following points in the order stated:

(1) 48°06.97′ N lat., 126°02.96′ W long.;

(2) 48°00.44′ N lat., 125°54.96′ W long.;

(3) 47°55.96′ N lat., 125°46.51′ W long.;

(4) 47°47.21′ N lat., 125°43.73′ W long.;

(5) 47°42.89′ N lat., 125°49.58′ W long.;
(6) 47°38.18′ N lat., 125°37.26′ W long.;
(7) 47°32.36′ N lat., 125°32.87′ W long.;
(8) 47°29.77′ N lat., 125°26.27′ W long.;
(9) 47°28.54′ N lat., 125°18.82′ W long.;
(10) 47°19.25′ N lat., 125°17.18′ W long.;
(11) 47°08.82′ N lat., 125°10.01′ W long.;
(12) 47°04.69′ N lat., 125°03.77′ W long.;
(13) 46°48.38′ N lat., 125°18.43′ W long.;
(14) 46°41.92′ N lat., 125°17.29′ W long.;
(15) 46°27.49′ N lat., 124°54.36′ W long.;
(16) 46°14.13′ N lat., 125°02.72′ W long.;
(17) 46°09.53′ N lat., 125°04.75′ W long.;
(18) 45°46.64′ N lat., 124°54.44′ W long.;
(19) 45°40.86′ N lat., 124°55.62′ W long.;
(20) 45°36.50′ N lat., 124°51.91′ W long.;
(21) 44°55.69′ N lat., 125°08.35′ W long.;
(22) 44°49.93′ N lat., 125°01.51′ W long.;
(23) 44°46.93′ N lat., 125°02.83′ W long.;
(24) 44°41.96′ N lat., 125°10.64′ W long.;
(25) 44°28.31′ N lat., 125°11.42′ W long.;
(26) 43°58.37′ N lat., 125°02.93′ W long.;
(27) 43°52.74′ N lat., 125°05.58′ W long.;
(28) 43°44.18′ N lat., 124°57.17′ W long.;
(29) 43°37.58′ N lat., 125°07.70′ W long.;
(30) 43°15.95′ N lat., 125°07.84′ W long.;
(31) 42°47.50′ N lat., 124°59.96′ W long.;
(32) 42°39.02′ N lat., 125°01.07′ W long.;
(33) 42°34.80′ N lat., 125°02.89′ W long.;
(34) 42°34.11′ N lat., 124°55.62′ W long.;
(35) 42°23.81′ N lat., 124°52.85′ W long.;
(36) 42°16.80′ N lat., 125°00.20′ W long.;
(37) 42°06.60′ N lat., 124°59.14′ W long.;
(38) 41°59.28′ N lat., 125°06.23′ W long.;
(39) 41°31.10′ N lat., 125°01.30′ W long.;
(40) 41°14.52′ N lat., 124°52.67′ W long.;
(41) 40°40.65′ N lat., 124°45.69′ W long.;
(42) 40°35.05′ N lat., 124°45.65′ W long.;
(43) 40°23.81′ N lat., 124°41.16′ W long.;
(44) 40°20.54′ N lat., 124°36.36′ W long.;
(45) 40°20.84′ N lat., 124°57.23′ W long.;
(46) 40°18.54′ N lat., 125°09.47′ W long.;
(47) 40°14.54′ N lat., 125°09.83′ W long.;
(48) 40°11.79′ N lat., 125°07.39′ W long.;
(49) 40°06.72′ N lat., 125°04.28′ W long.;
(50) 39°52.62′ N lat., 124°40.65′ W long.;
(51) 39°52.29′ N lat., 124°34.72′ W long.;
(52) 39°55.19′ N lat., 124°29.32′ W long.;
(53) 39°54.43′ N lat., 124°24.06′ W long.;
(54) 39°44.25′ N lat., 124°12.60′ W long.;
(55) 39°35.82′ N lat., 124°12.02′ W long.;
(56) 39°24.54′ N lat., 124°16.01′ W long.;
(57) 39°01.97′ N lat., 124°11.20′ W long.;
(58) 38°33.48′ N lat., 123°48.21′ W long.;
(59) 38°14.49′ N lat., 123°38.89′ W long.;
(60) 37°56.97′ N lat., 123°31.65′ W long.;
(61) 37°49.09′ N lat., 123°27.98′ W long.;
(62) 37°40.29′ N lat., 123°12.83′ W long.;
(63) 37°22.54′ N lat., 123°14.65′ W long.;
(64) 37°05.98′ N lat., 123°05.31′ W long.;
(65) 36°59.02′ N lat., 122°50.92′ W long.;
(66) 36°51.52′ N lat., 122°22.03′ W long.;
(67) 36°49.09′ N lat., 122°21.84′ W long.;
(68) 36°50.47′ N lat., 122°19.03′ W long.;
(69) 36°50.14′ N lat., 122°17.50′ W long.;
(70) 36°44.54′ N lat., 122°19.42′ W long.;
(71) 36°40.76′ N lat., 122°17.28′ W long.;
(72) 36°39.88′ N lat., 122°09.69′ W long.;
(73) 36°40.02′ N lat., 122°09.09′ W long.;
(74) 36°40.99′ N lat., 122°08.53′ W long.;
(75) 36°41.17′ N lat., 122°08.97′ W long.;
(76) 36°44.52′ N lat., 122°07.13′ W long.;
(77) 36°42.26′ N lat., 122°03.54′ W long.;
(78) 36°30.02′ N lat., 122°09.85′ W long.;
(79) 36°22.33′ N lat., 122°22.99′ W long.;
(80) 36°14.36′ N lat., 122°21.19′ W long.;
(81) 36°09.50′ N lat., 122°14.25′ W long.;
(82) 35°51.50′ N lat., 121°55.92′ W long.;
(83) 35°49.53′ N lat., 122°13.00′ W long.;
(84) 34°58.30′ N lat., 121°36.76′ W long.;
(85) 34°53.13′ N lat., 121°37.49′ W long.;
(86) 34°46.54′ N lat., 121°46.25′ W long.;
(87) 34°37.81′ N lat., 121°35.72′ W long.;
(88) 34°37.72′ N lat., 121°27.35′ W long.;
(89) 34°26.77′ N lat., 121°07.58′ W long.;
(90) 34°18.54′ N lat., 121°05.01′ W long.;
(91) 34°02.68′ N lat., 120°54.30′ W long.;
(92) 33°48.11′ N lat., 120°25.46′ W long.;
(93) 33°42.54′ N lat., 120°38.24′ W long.;
(94) 33°46.26′ N lat., 120°43.64′ W long.;
(95) 33°40.71′ N lat., 120°51.29′ W long.;
(96) 33°33.14′ N lat., 120°40.25′ W long.;
(97) 32°51.57′ N lat., 120°23.35′ W long.;
(98) 32°38.54′ N lat., 120°09.54′ W long.;
(99) 32°35.76′ N lat., 119°53.43′ W long.;
(100) 32°29.54′ N lat., 119°46.00′ W long.;
(101) 32°25.99′ N lat., 119°41.16′ W long.;
(102) 32°30.46′ N lat., 119°33.15′ W long.;
(103) 32°23.47′ N lat., 119°25.71′ W long.;
(104) 32°19.19′ N lat., 119°13.96′ W long.;
(105) 32°13.18′ N lat., 119°04.44′ W long.;
(106) 32°13.40′ N lat., 118°51.87′ W long.;
(107) 32°19.62′ N lat., 118°47.80′ W long.;
(108) 32°27.26′ N lat., 118°50.29′ W long.;
(109) 32°28.42′ N lat., 118°53.15′ W long.;

(110) 32°31.30′ N lat., 118°55.09′ W long.;
(111) 32°33.04′ N lat., 118°53.57′ W long.;
(112) 32°19.07′ N lat., 118°27.54′ W long.;
(113) 32°18.57′ N lat., 118°18.97′ W long.;
(114) 32°09.01′ N lat., 118°13.96′ W long.;
(115) 32°06.57′ N lat., 118°18.78′ W long.;
(116) 32°01.32′ N lat., 118°18.21′ W long.; and
(117) 31°57.89′ N lat., 118°10.51′ W long.

■ 11. Revise § 660.77 to read as follows:

§ 660.77 EFHCAs off the Coast of Washington.

(a) *General.* Boundary line coordinates for EFHCAs off Washington are provided in this section. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFHCAs is detailed at §§ 660.12, 660.112, 660.130, 660.212, 660.230, 660.312, 660.330, and 660.360.

(b) *Olympic 2.* The boundary of the Olympic 2 EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 48°21.46′ N lat., 124°51.61′ W long.;
(2) 48°17.00′ N lat., 124°57.18′ W long.;
(3) 48°06.13′ N lat., 125°00.68′ W long.;
(4) 48°06.66′ N lat., 125°06.55′ W long.;
(5) 48°08.44′ N lat., 125°14.61′ W long.;
(6) 48°22.57′ N lat., 125°09.82′ W long.;
(7) 48°21.42′ N lat., 125°03.55′ W long.;
(8) 48°22.99′ N lat., 124°59.29′ W long.;
(9) 48°23.89′ N lat., 124°54.37′ W long.;
and connecting back to 48°21.46′ N lat., 124°51.61′ W long.

(c) *Biogenic 1.* The boundary of the Biogenic 1 EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 47°29.97′ N lat., 125°20.14′ W long.;
(2) 47°30.01′ N lat., 125°30.06′ W long.;
(3) 47°40.09′ N lat., 125°50.18′ W long.;
(4) 47°47.27′ N lat., 125°50.06′ W long.;
(5) 47°47.00′ N lat., 125°24.28′ W long.;
(6) 47°39.53′ N lat., 125°10.49′ W long.;
(7) 47°30.31′ N lat., 125°08.81′ W long.;
and connecting back to 47°29.97′ N lat., 125°20.14′ W long.

(d) *Biogenic 2.* The boundary of the Biogenic 2 EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 47°08.77′ N lat., 125°00.91′ W long.;
(2) 47°08.82′ N lat., 125°10.01′ W long.;
(3) 47°20.01′ N lat., 125°10.00′ W long.;
(4) 47°20.00′ N lat., 125°01.25′ W long.;
and connecting back to 47°08.77′ N lat., 125°00.91′ W long.

(e) *Quinault Canyon.* The boundary of the Quinault Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 47°17.00′ N lat., 125°15.63′ W long.;
(2) 47°17.00′ N lat., 125°10.00′ W long.;
(3) 47°08.82′ N lat., 125°10.01′ W long.;
and connecting back to 47°17.00′ N lat., 125°15.63′ W long.

(f) *Grays Canyon.* The boundary of the Grays Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 46°56.79′ N lat., 125°00.00′ W long.;
(2) 46°58.30′ N lat., 125°00.21′ W long.;
(3) 46°58.47′ N lat., 124°59.08′ W long.;
(4) 47°01.04′ N lat., 124°59.54′ W long.;
(5) 47°02.54′ N lat., 124°57.40′ W long.,
(6) 46°57.88′ N lat., 124°55.63′ W long.;
(7) 46°58.01′ N lat., 124°55.09′ W long.;
(8) 46°55.07′ N lat., 124°54.14′ W long.;
(9) 46°59.60′ N lat., 124°49.79′ W long.;
(10) 46°58.72′ N lat., 124°48.78′ W long.;
(11) 46°54.45′ N lat., 124°48.36′ W long.;
(12) 46°53.99′ N lat., 124°49.95′ W long.;
(13) 46°54.38′ N lat., 124°52.73′ W long.;
(14) 46°53.30′ N lat., 124°52.35′ W long.;
(15) 46°53.30′ N lat., 124°49.13′ W long.;
(16) 46°50.40′ N lat., 124°49.06′ W long.;
(17) 46°48.12′ N lat., 124°47.94′ W long.;
(18) 46°47.48′ N lat., 124°50.86′ W long.;
(19) 46°49.81′ N lat., 124°52.79′ W long.;
(20) 46°51.55′ N lat., 125°00.00′ W long.;
and connecting back to 46°56.79′ N lat., 125°00.00′ W long.

(g) *Biogenic 3.* The boundary of the Biogenic 3 EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 46°48.16′ N lat., 125°10.75′ W long.;
(2) 46°40.00′ N lat., 125°10.00′ W long.;
(3) 46°40.00′ N lat., 125°20.01′ W long.;
(4) 46°50.00′ N lat., 125°20.00′ W long.;
and connecting back to 46°48.16′ N lat., 125°10.75′ W long.

(h) *Willapa Canyonhead.* The boundary of the Willapa Canyonhead EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 46°33.50′ N lat., 124°28.77′ W long.;
(2) 46°33.50′ N lat., 124°29.50′ W long.;
(3) 46°33.85′ N lat., 124°36.99′ W long.;
(4) 46°36.50′ N lat., 124°38.00′ W long.;
(5) 46°37.50′ N lat., 124°41.00′ W long.;
(6) 46°37.64′ N lat., 124°41.11′ W long.;
(7) 46°39.43′ N lat., 124°38.69′ W long.;
(8) 46°34.50′ N lat., 124°28.50′ W long.;
and connecting back to 46°33.50′ N lat., 124°28.77′ W long.

(i) *Willapa Deep.* The boundary of the Willapa Deep EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 46°22.57′ N lat., 124°46.70′ W long.;
(2) 46°24.38′ N lat., 124°56.31′ W long.;
(3) 46°27.49′ N lat., 124°54.36′ W long.;
(4) 46°36.87′ N lat., 125°09.27′ W long.;
(5) 46°35.59′ N lat., 125°04.58′ W long.;
(6) 46°31.54′ N lat., 124°57.53′ W long.;
(7) 46°28.70′ N lat., 124°51.77′ W long.;
(8) 46°23.78′ N lat., 124°43.30′ W long.;
And connecting back to 46°22.57′ N lat., 124°46.70′ W long.

■ 12. Revise § 660.78 to read as follows:

§ 660.78 EFHCAs off the Coast of Oregon.

(a) *General.* Boundary line coordinates for EFHCAs off Oregon are

provided in this section. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFHCA is detailed at §§ 660.12, 660.112, 660.130, 660.212, 660.230, 660.312, 660.330, and 660.360.

(b) *Astoria Deep.* The boundary of the Astoria Deep EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 46°03.00′ N lat., 124°57.36′ W long.;

(2) 46°05.37′ N lat., 125°02.88′ W long.;

(3) 46°09.53′ N lat., 125°04.75′ W long.;

(4) 46°14.13′ N lat., 125°02.72′ W long.;

(5) 46°14.79′ N lat., 125°02.31′ W long.;

(6) 46°08.28′ N lat., 125°00.20′ W long.;

(7) 46°05.74′ N lat., 124°55.32′ W long.;

and connecting back to 46°03.00′ N lat., 124°57.36′ W long.

(c) *Thompson Seamount.* The boundary of the Thompson Seamount EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 46°06.93′ N lat., 128°39.77′ W long.;

(2) 46°06.76′ N lat., 128°39.60′ W long.;

(3) 46°07.80′ N lat., 128°39.43′ W long.;

(4) 46°08.50′ N lat., 128°34.39′ W long.;

(5) 46°06.76′ N lat., 128°29.36′ W long.;

(6) 46°03.64′ N lat., 128°28.67′ W long.;

(7) 45°59.64′ N lat., 128°31.62′ W long.;

(8) 45°56.87′ N lat., 128°33.18′ W long.;

(9) 45°53.92′ N lat., 128°39.25′ W long.;

(10) 45°54.26′ N lat., 128°43.42′ W long.;

(11) 45°56.87′ N lat., 128°45.85′ W long.;

(12) 46°00.86′ N lat., 128°46.02′ W long.;

(13) 46°03.29′ N lat., 128°44.81′ W long.;

(14) 46°06.24′ N lat., 128°42.90′ W long.;

and connecting back to 46°06.93′ N lat., 128°39.77′ W long.

(d) *Astoria Canyon.* The boundary of the Astoria Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 46°06.48′ N lat., 125°05.46′ W long.;

(2) 46°03.00′ N lat., 124°57.36′ W long.;

(3) 46°02.28′ N lat., 124°57.66′ W long.;

(4) 46°01.92′ N lat., 125°02.46′ W long.;

(5) 45°48.72′ N lat., 124°56.58′ W long.;

(6) 45°47.70′ N lat., 124°52.20′ W long.;

(7) 45°40.86′ N lat., 124°55.62′ W long.;

(8) 45°29.82′ N lat., 124°54.30′ W long.;

(9) 45°25.98′ N lat., 124°56.82′ W long.;

(10) 45°26.04′ N lat., 125°10.50′ W long.;

(11) 45°33.12′ N lat., 125°16.26′ W long.;

(12) 45°40.32′ N lat., 125°17.16′ W long.;

(13) 46°03.00′ N lat., 125°14.94′ W long.;

and connecting back to 46°06.48′ N lat., 125°05.46′ W long.

(e) *Nehalem Bank/Shale Pile.* The boundary of the Nehalem Bank/Shale Pile EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 45°51.53′ N lat., 124°31.15′ W long.;

(2) 45°47.95′ N lat., 124°31.70′ W long.;

(3) 45°52.75′ N lat., 124°39.20′ W long.;

(4) 45°58.02′ N lat., 124°38.99′ W long.;

(5) 45°60.83′ N lat., 124°36.78′ W long.;

(6) 45°59.94′ N lat., 124°34.63′ W long.;

(7) 45°58.90′ N lat., 124°33.47′ W long.;

(8) 45°54.27′ N lat., 124°30.73′ W long.;

(9) 45°53.62′ N lat., 124°30.83′ W long.;

(10) 45°52.90′ N lat., 124°30.67′ W long.;

(11) 45°52.03′ N lat., 124°30.60′ W long.;

(12) 45°51.74′ N lat., 124°30.85′ W long.;

and connecting back to 45°51.53′ N lat., 124°31.15′ W long.

(f) *Garibaldi Reef North.* The boundary of the Garibaldi Reef North EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 45°40.81′ N lat., 124°18.46′ W long.;

(2) 45°39.70′ N lat., 124°19.46′ W long.;

(3) 45°40.84′ N lat., 124°22.17′ W long.;

(4) 45°44.94′ N lat., 124°23.07′ W long.;

(5) 45°45.17′ N lat., 124°22.19′ W long.;

(6) 45°43.49′ N lat., 124°18.94′ W long.;

and connecting back to 45°40.81′ N lat., 124°18.46′ W long.

(g) *Garibaldi Reef South.* The boundary of the Garibaldi Reef South EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 45°34.53′ N lat., 124°15.47′ W long.;

(2) 45°33.46′ N lat., 124°13.59′ W long.;

(3) 45°32.53′ N lat., 124°14.39′ W long.;

(4) 45°33.58′ N lat., 124°16.54′ W long.;

and connecting back to 45°34.53′ N lat., 124°15.47′ W long.

(h) *Siletz Deepwater.* The boundary of the Siletz Deepwater EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 44°42.72′ N lat., 125°18.49′ W long.;

(2) 44°56.26′ N lat., 125°12.61′ W long.;

(3) 44°56.34′ N lat., 125°09.13′ W long.;

(4) 44°49.93′ N lat., 125°01.51′ W long.;

(5) 44°46.93′ N lat., 125°02.83′ W long.;

(6) 44°41.96′ N lat., 125°10.64′ W long.;

(7) 44°33.36′ N lat., 125°08.82′ W long.;

(8) 44°33.38′ N lat., 125°17.08′ W long.;

and connecting back to 44°42.72′ N lat., 125°18.49′ W long.

(i) *Daisy Bank/Nelson Island.* The boundary of the Daisy Bank/Nelson Island EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 44°39.24′ N lat., 124°38.65′ W long.;

(2) 44°37.17′ N lat., 124°38.60′ W long.;

(3) 44°35.55′ N lat., 124°39.27′ W long.;

(4) 44°37.57′ N lat., 124°41.70′ W long.;

(5) 44°36.90′ N lat., 124°42.91′ W long.;

(6) 44°38.25′ N lat., 124°46.28′ W long.;

(7) 44°38.52′ N lat., 124°49.11′ W long.;

(8) 44°40.27′ N lat., 124°49.11′ W long.;

(9) 44°41.35′ N lat., 124°48.03′ W long.;

(10) 44°43.92′ N lat., 124°44.66′ W long.;

and connecting back to 44°39.24′ N lat., 124°38.65′ W long.

(j) *Newport Rockpile/Stonewall Bank.* The boundary of the Newport Rockpile/

Stonewall Bank EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 44°27.42′ N lat., 124°19.52′ W long.;

(2) 44°27.42′ N lat., 124°25.31′ W long.;

(3) 44°29.05′ N lat., 124°28.88′ W long.;

(4) 44°35.33′ N lat., 124°28.87′ W long.;

(5) 44°36.94′ N lat., 124°26.78′ W long.;

(6) 44°38.62′ N lat., 124°26.76′ W long.;

(7) 44°39.02′ N lat., 124°25.56′ W long.;

(8) 44°38.41′ N lat., 124°22.73′ W long.;

(9) 44°35.12′ N lat., 124°21.79′ W long.;

(10) 44°28.82′ N lat., 124°18.80′ W long.;

and connecting back to 44°27.42′ N lat., 124°19.52′ W long.

(k) *Hydrate Ridge.* The boundary of the Hydrate Ridge EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 44°28.31′ N lat., 125°11.42′ W long.;

(2) 44°33.37′ N lat., 125°11.13′ W long.;

(3) 44°33.36′ N lat., 125°08.82′ W long.;

(4) 44°35.36′ N lat., 125°09.24′ W long.;

(5) 44°35.36′ N lat., 125°07.79′ W long.;

(6) 44°28.31′ N lat., 125°07.66′ W long.;

and connecting back to 44°28.31′ N lat., 125°11.42′ W long.

(l) *Heceta Bank.* The boundary of the Heceta Bank EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 44°22.27′ N lat., 124°37.63′ W long.;

(2) 44°20.56′ N lat., 124°36.27′ W long.;

(3) 44°21.06′ N lat., 124°32.69′ W long.;

(4) 44°21.76′ N lat., 124°29.28′ W long.;

(5) 44°21.23′ N lat., 124°28.08′ W long.;

(6) 44°18.68′ N lat., 124°28.13′ W long.;

(7) 44°17.66′ N lat., 124°31.42′ W long.;

(8) 44°14.32′ N lat., 124°31.15′ W long.;

(9) 44°13.02′ N lat., 124°31.53′ W long.;

(10) 44°12.97′ N lat., 124°32.29′ W long.;

(11) 44°13.84′ N lat., 124°32.87′ W long.;

(12) 44°16.64′ N lat., 124°33.44′ W long.;

(13) 44°17.00′ N lat., 124°33.52′ W long.;

(14) 44°15.93′ N lat., 124°35.93′ W long.;

(15) 44°14.38′ N lat., 124°37.37′ W long.;

(16) 44°13.52′ N lat., 124°40.45′ W long.;

(17) 44°09.00′ N lat., 124°45.30′ W long.;

(18) 44°03.46′ N lat., 124°45.71′ W long.;

(19) 43°58.55′ N lat., 124°45.79′ W long.;

(20) 43°57.37′ N lat., 124°50.89′ W long.;

(21) 43°56.66′ N lat., 124°54.47′ W long.;

(22) 43°57.24′ N lat., 124°55.54′ W long.;

(23) 43°57.68′ N lat., 124°55.48′ W long.;

(24) 44°00.14′ N lat., 124°55.25′ W long.;

(25) 44°02.88′ N lat., 124°53.96′ W long.;

(26) 44°13.47′ N lat., 124°54.08′ W long.;

(27) 44°19.27′ N lat., 124°41.03′ W long.;

(28) 44°24.16′ N lat., 124°40.62′ W long.;

(29) 44°24.10′ N lat., 124°38.10′ W long.;

and connecting back to 44°22.27′ N lat., 124°37.63′ W long.

(m) *Deepwater off Coos Bay.* The boundary of the Deepwater off Coos Bay EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 43°29.32′ N lat., 125°20.11′ W long.;

(2) 43°38.96′ N lat., 125°18.75′ W long.;

(3) 43°37.88′ N lat., 125°08.26′ W long.;

(4) 43°36.58′ N lat., 125°06.56′ W long.;

(5) 43°33.04′ N lat., 125°08.41′ W long.;

(6) 43°27.74′ N lat., 125°07.25′ W long.;

(7) 43°15.95′ N lat., 125°07.84′ W long.;

(8) 43°15.38′ N lat., 125°10.47′ W long.;

(9) 43°25.73′ N lat., 125°19.36′ W long.;

and connecting back to 43°29.32′ N lat., 125°20.11′ W long.

(n) *Arago Reef.* The boundary of the Arago Reef EFHCA is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by connecting the following coordinates in the order stated:

(1) 43°08.49′ N lat., 124°30.78′ W long.;

(2) 43°08.55′ N lat., 124°30.79′ W long.;

(3) 43°10.22′ N lat., 124°37.82′ W long.;

(4) 43°16.91′ N lat., 124°37.50′ W long.;

(5) 43°16.51′ N lat., 124°28.97′ W long.; and

(6) 43°16.88′ N lat., 124°28.16′ W long.

(o) *Bandon High Spot.* The boundary of the Bandon High Spot EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 42°57.18′ N lat., 124°46.01′ W long.;

(2) 42°56.10′ N lat., 124°47.48′ W long.;

(3) 42°56.66′ N lat., 124°48.79′ W long.;

(4) 42°53.67′ N lat., 124°51.81′ W long.;

(5) 42°54.00′ N lat., 124°53.03′ W long.;

(6) 42°55.11′ N lat., 124°53.71′ W long.;

(7) 42°58.00′ N lat., 124°52.99′ W long.;

(8) 43°00.39′ N lat., 124°51.77′ W long.;

(9) 43°02.64′ N lat., 124°52.01′ W long.;

(10) 43°06.07′ N lat., 124°50.97′ W long.;

(11) 43°06.07′ N lat., 124°50.23′ W long.;

(12) 43°04.47′ N lat., 124°48.50′ W long.;

(13) 43°03.20′ N lat., 124°47.52′ W long.;

(14) 43°00.94′ N lat., 124°46.57′ W long.;

and connecting back to 42°57.18′ N lat., 124°46.01′ W long.

(p) *President Jackson Seamount.* The boundary of the President Jackson Seamount EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 42°21.41′ N lat., 127°42.91′ W long.;

(2) 42°21.96′ N lat., 127°43.73′ W long.;

(3) 42°23.78′ N lat., 127°46.09′ W long.;

(4) 42°26.05′ N lat., 127°48.64′ W long.;

(5) 42°28.60′ N lat., 127°52.10′ W long.;

(6) 42°31.06′ N lat., 127°55.02′ W long.;

(7) 42°34.61′ N lat., 127°58.84′ W long.;

(8) 42°37.34′ N lat., 128°01.48′ W long.;

(9) 42°39.62′ N lat., 128°05.12′ W long.;

(10) 42°41.81′ N lat., 128°08.13′ W long.;
(11) 42°43.44′ N lat., 128°10.04′ W long.;
(12) 42°44.99′ N lat., 128°12.04′ W long.;
(13) 42°48.27′ N lat., 128°15.05′ W long.;
(14) 42°51.28′ N lat., 128°15.05′ W long.;
(15) 42°53.64′ N lat., 128°12.23′ W long.;
(16) 42°52.64′ N lat., 128°08.49′ W long.;
(17) 42°51.64′ N lat., 128°06.94′ W long.;
(18) 42°50.27′ N lat., 128°05.76′ W long.;
(19) 42°48.18′ N lat., 128°03.76′ W long.;
(20) 42°45.45′ N lat., 128°01.94′ W long.;
(21) 42°42.17′ N lat., 127°57.57′ W long.;
(22) 42°41.17′ N lat., 127°53.92′ W long.;
(23) 42°38.80′ N lat., 127°49.92′ W long.;
(24) 42°36.43′ N lat., 127°44.82′ W long.;
(25) 42°33.52′ N lat., 127°41.36′ W long.;
(26) 42°31.24′ N lat., 127°39.63′ W long.;
(27) 42°28.33′ N lat., 127°36.53′ W long.;
(28) 42°23.96′ N lat., 127°35.89′ W long.;
(29) 42°21.96′ N lat., 127°37.72′ W long.;
(30) 42°21.05′ N lat., 127°40.81′ W long.;
and connecting back to 42°21.41′ N lat., 127°42.91′ W long.

(q) *Rogue Canyon.* The boundary of the Rogue Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 42°41.33′ N lat., 125°16.61′ W long.;
(2) 42°41.55′ N lat., 125°03.05′ W long.;
(3) 42°35.29′ N lat., 125°02.21′ W long.;
(4) 42°34.11′ N lat., 124°55.62′ W long.;
(5) 42°30.61′ N lat., 124°54.97′ W long.;
(6) 42°23.81′ N lat., 124°52.85′ W long.;
(7) 42°17.94′ N lat., 125°10.17′ W long.;
and connecting back to 42°41.33′ N lat., 125°16.61′ W long.

(r) *Rogue River Reef.* The boundary of the Rogue River Reef EFHCA is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by connecting the following coordinates in the order stated:
(1) 42°23.27′ N lat., 124°30.03′ W long.;
(2) 42°24.10′ N lat., 124°32.41′ W long.;
(3) 42°22.28′ N lat., 124°39.92′ W long.;
(4) 42°25.46′ N lat., 124°43.91′ W long.;
(5) 42°27.87′ N lat., 124°44.63′ W long.;
(6) 42°29.27′ N lat., 124°44.22′ W long.;
(7) 42°29.71′ N lat., 124°39.83′ W long.;
(8) 42°29.36′ N lat., 124°36.53′ W long.; and
(9) 42°28.16′ N lat., 124°34.05′ W long.

■ 14. Revise § 660.79 to read as follows:

§ 660.79 EFHCAs off the Coast of California.

(a) *General.* Boundary line coordinates for EFHCA off California are provided in this section. Fishing activity that is prohibited or permitted within the EEZ in a particular area designated as a groundfish EFHCA is detailed at §§ 660.12, 660.112, 660.130, 660.212, 660.230, 660.312, 660.330, and 660.360.

(b) *Brush Patch.* The boundary of the Brush Patch EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 41°51.03′ N lat., 124°48.65′ W long.;
(2) 41°51.98′ N lat., 124°51.00′ W long.;
(3) 41°53.63′ N lat., 124°53.12′ W long.;
(4) 41°55.22′ N lat., 124°54.50′ W long.;
(5) 41°57.16′ N lat., 124°54.87′ W long.;
(6) 41°59.16′ N lat., 124°52.89′ W long.;
(7) 41°58.93′ N lat., 124°51.25′ W long.;
(8) 41°57.98′ N lat., 124°50.42′ W long.;
(9) 41°54.50′ N lat., 124°49.72′ W long.;
(10) 41°52.66′ N lat., 124°47.85′ W long.;
(11) 41°51.24′ N lat., 124°47.23′ W long.;
and connecting back to 41°51.03′ N lat., 124°48.65′ W long.

(c) *Trinidad Canyon.* The boundary of the Trinidad Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 41°07.81′ N lat., 124°51.29′ W long.;
(2) 41°14.52′ N lat., 124°52.67′ W long.;
(3) 41°17.66′ N lat., 124°54.31′ W long.;
(4) 41°18.37′ N lat., 124°45.50′ W long.;
(5) 41°17.60′ N lat., 124°43.42′ W long.;
(6) 41°09.44′ N lat., 124°43.11′ W long.;
and connecting back to 41°07.81′ N lat., 124°51.29′ W long.

(d) *Mad River Rough Patch.* The boundary of the Mad River Rough Patch EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 40°53.66′ N lat., 124°26.68′ W long.;
(2) 40°54.49′ N lat., 124°28.22′ W long.;
(3) 40°54.88′ N lat., 124°28.54′ W long.;
(4) 40°57.27′ N lat., 124°29.10′ W long.;
(5) 40°57.37′ N lat., 124°28.96′ W long.;
(6) 40°57.27′ N lat., 124°28.34′ W long.;
(7) 40°54.56′ N lat., 124°26.25′ W long.;
(8) 40°54.13′ N lat., 124°26.27′ W long.;
and connecting back to 40°53.66′ N lat., 124°26.68′ W long.

(e) *Samoa Deepwater.* The boundary of the Samoa Deepwater EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 40°50.11′ N lat., 124°35.29′ W long.;
(2) 40°46.37′ N lat., 124°34.69′ W long.;
(3) 40°48.50′ N lat., 124°39.04′ W long.;
(4) 40°51.96′ N lat., 124°41.23′ W long.;
(5) 40°52.04′ N lat., 124°38.08′ W long.;
and connecting back to 40°50.11′ N lat., 124°35.29′ W long.

(f) *Eel River Canyon.* The boundary of the Eel River Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 40°40.33′ N lat., 124°41.82′ W long.;
(2) 40°39.69′ N lat., 124°33.36′ W long.;
(3) 40°40.13′ N lat., 124°32.61′ W long.;
(4) 40°39.84′ N lat., 124°31.21′ W long.;
(5) 40°39.36′ N lat., 124°30.48′ W long.;
(6) 40°39.42′ N lat., 124°29.40′ W long.;
(7) 40°38.91′ N lat., 124°28.42′ W long.;
(8) 40°38.57′ N lat., 124°28.49′ W long.;
(9) 40°37.56′ N lat., 124°28.78′ W long.;
(10) 40°37.08′ N lat., 124°28.42′ W long.;

(11) 40°35.79′ N lat., 124°29.21′ W long.;
(12) 40°37.52′ N lat., 124°33.41′ W long.;
(13) 40°37.51′ N lat., 124°34.46′ W long.;
(14) 40°38.22′ N lat., 124°35.72′ W long.;
(15) 40°38.27′ N lat., 124°39.11′ W long.;
(16) 40°37.47′ N lat., 124°40.46′ W long.;
(17) 40°35.47′ N lat., 124°42.97′ W long.;
(18) 40°32.78′ N lat., 124°44.79′ W long.;
(19) 40°24.32′ N lat., 124°39.97′ W long.;
(20) 40°23.26′ N lat., 124°42.45′ W long.;
(21) 40°27.34′ N lat., 124°51.21′ W long.;
(22) 40°32.68′ N lat., 124°65.63′ W long.;
(23) 40°49.12′ N lat., 124°47.41′ W long.;
(24) 40°44.32′ N lat., 124°46.48′ W long.;
(25) 40°41.67′ N lat., 124°42.92′ W long.;
and connecting back to 40°40.33′ N lat., 124°41.82′ W long.

(g) *Blunts Reef.* The Blunts Reef EFHCA consists of the two adjacent polygons defined in this paragraph, combined.

(1) *Blunts Reef North.* The boundary of Blunts Reef North is defined by straight lines connecting all of the following points in the order stated:
(i) 40°30.21′ N lat., 124°26.85′ W long.;
(ii) 40°27.53′ N lat., 124°26.84′ W long.;
(iii) 40°24.66′ N lat., 124°29.49′ W long.;
(iv) 40°27.84′ N lat., 124°31.92′ W long.;
(v) 40°28.31′ N lat., 124°33.49′ W long.;
(vi) 40°29.99′ N lat., 124°33.49′ W long.;
(vii) 40°30.46′ N lat., 124°32.23′ W long.;
and connecting back to 40°30.21′ N lat., 124°26.85′ W long.

(2) *Blunts Reef South.* The boundary of Blunts Reef South is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by straight lines connecting the following coordinates in the order stated:
(i) 40°27.84′ N lat., 124°31.92′ W long.;
(ii) 40°28.31′ N lat., 124°33.49′ W long.;
(iii) 40°22.49′ N lat., 124°30.92′ W long.; and
(iv) 40°23.67′ N lat., 124°28.43′ W long.

(h) *Mendocino Ridge.* The Mendocino Ridge EFHCA consists of the two adjacent polygons defined in this paragraph, combined.

(1) *Mendocino Ridge North.* The boundary of Mendocino Ridge North is defined by straight lines connecting all of the following points in the order stated:
(i) 40°25.23′ N lat., 124°24.06′ W long.;
(ii) 40°12.50′ N lat., 124°22.59′ W long.;
(iii) 40°13.84′ N lat., 124°31.89′ W long.;
(iv) 40°14.96′ N lat., 124°35.42′ W long.;
(v) 40°15.92′ N lat., 124°36.38′ W long.;
(vi) 40°15.81′ N lat., 124°38.37′ W long.;
(vii) 40°17.45′ N lat., 124°45.42′ W long.;
(viii) 40°18.39′ N lat., 124°48.55′ W long.;
(ix) 40°19.98′ N lat., 124°52.73′ W long.;
(x) 40°20.06′ N lat., 125°02.18′ W long.;
(xi) 40°11.79′ N lat., 125°07.39′ W long.;
(xii) 40°12.55′ N lat., 125°11.56′ W long.;
(xiii) 40°12.81′ N lat., 125°12.98′ W long.;
(xiv) 40°20.72′ N lat., 125°57.31′ W long.;
(xv) 40°23.96′ N lat., 125°56.83′ W long.;
(xvi) 40°24.04′ N lat., 125°56.82′ W long.;
(xvii) 40°25.68′ N lat., 125°09.77′ W long.;
(xviii) 40°21.03′ N lat., 124°33.96′ W long.;
(xix) 40°25.72′ N lat., 124°24.15′ W long.;
and connecting back to 40°25.23′ N lat., 124°24.06′ W long.

(2) *Mendocino Ridge South.* The boundary of Mendocino Ridge South is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by connecting the following coordinates in the order stated:
(i) 40°10.03′ N lat., 124°20.51′ W long.;
(ii) 40°10.42′ N lat., 124°22.26′ W long.;
(iii) 40°13.84′ N lat., 124°31.89′ W long.; and
(iv) 40°12.82′ N lat., 124°24.85′ W long.

(i) *Delgada Canyon.* The boundary of the Delgada Canyon EFHCA is defined as the areas of the state territorial sea, east of the West Coast EEZ and within a boundary line defined by connecting the following coordinates in the order stated:
(1) 40°06.58′ N lat., 124°07.39′ W long.;
(2) 40°01.37′ N lat., 124°08.79′ W long.;
(3) 40°04.35′ N lat., 124°10.89′ W long.;
(4) 40°05.71′ N lat., 124°09.42′ W long.;
(5) 40°07.18′ N lat., 124°09.61′ W long.; and
(6) 40°07.13′ N lat., 124°09.09′ W long.

(j) *Tolo Bank.* The boundary of the Tolo Bank EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 39°58.75′ N lat., 124°04.58′ W long.;
(2) 39°56.05′ N lat., 124°01.45′ W long.;
(3) 39°53.99′ N lat., 124°00.17′ W long.;
(4) 39°52.28′ N lat., 124°03.12′ W long.;
(5) 39°57.90′ N lat., 124°07.07′ W long.;
and connecting back to 39°58.75′ N lat., 124°04.58′ W long.

(k) *Navarro Canyon.* The boundary of the Navarro Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 39°04.76′ N lat., 124°11.80′ W long.;
(2) 39°11.84′ N lat., 124°13.30′ W long.;
(3) 39°11.39′ N lat., 124°10.38′ W long.;
(4) 39°08.73′ N lat., 124°10.38′ W long.;
(5) 39°07.16′ N lat., 124°08.98′ W long.;
(6) 39°06.07′ N lat., 124°08.55′ W long.;
and connecting back to 39°04.76′ N lat., 124°11.80′ W long.

(l) *Point Arena North.* The boundary of the Point Arena North EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 39°03.32′ N lat., 123°51.15′ W long.;
(2) 38°56.54′ N lat., 123°49.79′ W long.;
(3) 38°54.12′ N lat., 123°52.69′ W long.;
(4) 38°59.64′ N lat., 123°55.02′ W long.;
(5) 39°02.83′ N lat., 123°55.21′ W long.;
and connecting back to 39°03.32′ N lat., 123°51.15′ W long.

(m) *Point Arena South Biogenic Area.* The boundary of the Point Arena South

Biogenic Area EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 38°33.24′ N lat., 123°35.18′ W long.;

(2) 38°32.01′ N lat., 123°35.78′ W long.;

(3) 38°33.19′ N lat., 123°40.30′ W long.;

(4) 38°34.62′ N lat., 123°42.32′ W long.;

(5) 38°35.98′ N lat., 123°44.22′ W long.;

(6) 38°38.27′ N lat., 123°46.57′ W long.;

(7) 38°41.11′ N lat.,123°48.69′ W long.;

(8) 38°41.95′ N lat., 123°45.41′ W long.;

(9) 38°36.02′ N lat., 123°41.30′ W long.;

(10) 38°34.37′ N lat., 123°37.47′ W long.;

and connecting back to 38°33.24′ N lat., 123°35.18′ W long.

(n) *The Football.* The boundary of The Football EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 38°24.36′ N lat., 123°32.10′ W long.;

(2) 38°23.58′ N lat., 123°33.96′ W long.;

(3) 38°29.10′ N lat., 123°37.32′ W long.;

(4) 38°29.04′ N lat., 123°35.04′ W long.;

and connecting back to 38°24.36′ N lat., 123°32.10′ W long.

(o) *Gobbler's Knob.* The boundary of the Gobbler's Knob EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 38°06.84′ N lat., 123°25.98′ W long.;

(2) 38°07.14′ N lat., 123°27.60′ W long.;

(3) 38°11.64′ N lat., 123°29.58′ W long.;

(4) 38°12.36′ N lat., 123°28.80′ W long.;

(5) 38°12.42′ N lat., 123°27.78′ W long.;

(6) 38°08.70′ N lat., 123°25.98′ W long.;

and connecting back to 38°06.84′ N lat., 123°25.98′ W long.

(p) *Point Reyes Reef.* The boundary of the Point Reyes Reef EFHCA is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by connecting the following coordinates in the order stated:

(1) 38°2.88′ N lat., 123°03.46′ W long.;

(2) 38°2.98′ N lat., 123°03.84′ W long.;

(3) 38°6.52′ N lat., 123°03.63′ W long.;

(4) 38°8.69′ N lat., 123°01.86′ W long.; and

(5) 38°8.92′ N lat., 123°00.90′ W long.

(q) *Cordell Bank/Biogenic Area.* The boundary of the Cordell Bank/Biogenic Area EFHCA is located offshore of California's Marin County defined by straight lines connecting all of the following points in the order stated:

(1) 38°05.46′ N lat., 123°25.97′ W long.;

(2) 38°04.44′ N lat., 123°24.44′ W long.;

(3) 38°03.05′ N lat., 123°21.33′ W long.;

(4) 38°03.07′ N lat., 123°07.35′ W long.;

(5) 38°02.84′ N lat., 123°07.36′ W long.;

(6) 38°01.09′ N lat., 123°07.06′ W long.;

(7) 38°01.02′ N lat., 123°22.08′ W long.;

(8) 37°54.75′ N lat., 123°23.64′ W long.;

(9) 37°46.01′ N lat., 123°25.62′ W long.;

(10) 37°46.68′ N lat., 123°27.05′ W long.;

(11) 37°47.66′ N lat., 123°28.18′ W long.;

(12) 37°50.26′ N lat., 123°30.94′ W long.;

(13) 37°54.41′ N lat., 123°32.69′ W long.;

(14) 37°56.94′ N lat., 123°32.87′ W long.;

(15) 37°57.09′ N lat., 123°26.39′ W long.;

(16) 37°57.76′ N lat., 123°26.48′ W long.;

(17) 37°58.57′ N lat., 123°26.95′ W long.;

(18) 37°59.94′ N lat., 123°28.58′ W long.;

(19) 38°00.27′ N lat., 123°29.32′ W long.;

(20) 38°00.63′ N lat., 123°29.95′ W long.;

(21) 38°01.23′ N lat., 123°30.53′ W long.;

(22) 38°01.60′ N lat., 123°30.81′ W long.;

(23) 38°01.84′ N lat., 123°31.05′ W long.;

(24) 38°02.00′ N lat., 123°31.31′ W long.;

(25) 38°02.37′ N lat., 123°31.45′ W long.;

(26) 38°03.99′ N lat., 123°30.75′ W long.;

(27) 38°04.85′ N lat., 123°30.36′ W long.;

(28) 38°05.73′ N lat., 123°28.46′ W long.;

and connecting back to 38°05.46′ N lat., 123°25.97′ W long.

(r) *Cordell Bank (50-fm (91-m) isobath).* The boundary of the Cordell Bank (50-fm (91-m) isobath) EFHCA is located offshore of California's Marin County defined by straight lines connecting all of the following points in the order stated:

(1) 37°57.62′ N lat., 123°24.22′ W long.;

(2) 37°57.70′ N lat., 123°25.25′ W long.;

(3) 37°59.47′ N lat., 123°26.63′ W long.;

(4) 38°00.24′ N lat., 123°27.87′ W long.;

(5) 38°00.98′ N lat., 123°27.65′ W long.;

(6) 38°02.81′ N lat., 123°28.75′ W long.;

(7) 38°04.26′ N lat., 123°29.25′ W long.;

(8) 38°04.55′ N lat., 123°28.32′ W long.;

(9) 38°03.87′ N lat., 123°27.69′ W long.;

(10) 38°04.27′ N lat., 123°26.68′ W long.;

(11) 38°02.67′ N lat., 123°24.17′ W long.;

(12) 38°00.87′ N lat., 123°23.15′ W long.;

(13) 37°59.32′ N lat., 123°22.52′ W long.;

(14) 37°58.24′ N lat., 123°23.16′ W long.;

and connecting back to 37°57.62′ N lat., 123°24.22′ W long.

(s) *Rittenburg Bank.* The boundary of the Rittenburg Bank EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 37°51.36′ N lat., 123°19.18′ W long.;

(2) 37°53.61′ N lat., 123°21.67′ W long.;

(3) 37°54.32′ N lat., 123°19.69′ W long.;

(4) 37°53.98′ N lat., 123°18.99′ W long.;

(5) 37°54.96′ N lat., 123°16.32′ W long.;

(6) 37°53.32′ N lat., 123°15.00′ W long.;

and connecting back to 37°51.36′ N lat., 123°19.18′ W long.

(t) *Farallon Islands/Fanny Shoal/Cochrane Bank.* The boundary of the Farallon Islands/Fanny Shoal/Cochrane Bank EFHCA is defined by straight lines connecting all of the following points in the order stated:

(1) 37°51.58′ N lat., 123°14.07′ W long.;

(2) 37°44.51′ N lat., 123°01.50′ W long.;

(3) 37°41.71′ N lat., 122°58.38′ W long.;

(4) 37°40.80′ N lat., 122°58.54′ W long.;

(5) 37°39.87′ N lat., 122°59.64′ W long.;

(6) 37°42.05′ N lat., 123°03.72′ W long.;

(7) 37°43.73′ N lat., 123°04.45′ W long.;

(8) 37°46.94′ N lat., 123°11.65′ W long.;
(9) 37°46.51′ N lat., 123°14.14′ W long.;
(10) 37°47.87′ N lat., 123°16.94′ W long.;
(11) 37°49.23′ N lat., 123°16.81′ W long.;
and connecting back to 37°51.58′ N lat., 123°14.07′ W long.

(u) *Farallon Escarpment.* The boundary of the Farallon Escarpment EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 37°44.85′ N lat., 123°13.73′ W long.;
(2) 37°45.58′ N lat., 123°12.74′ W long.;
(3) 37°45.18′ N lat., 123°11.87′ W long.;
(4) 37°42.71′ N lat., 123°09.04′ W long.;
(5) 37°40.73′ N lat., 123°08.42′ W long.;
(6) 37°39.15′ N lat., 123°06.76′ W long.;
(7) 37°38.26′ N lat., 123°08.27′ W long.;
(8) 37°34.32′ N lat., 123°07.43′ W long.;
(9) 37°29.55′ N lat., 123°09.74′ W long.;
(10) 37°29.18′ N lat., 123°13.97′ W long.;
(11) 37°40.29′ N lat., 123°12.83′ W long.;
(12) 37°47.52′ N lat., 123°25.28′ W long.;
(13) 37°50.65′ N lat., 123°24.57′ W long.;
and connecting back to 37°44.85′ N lat., 123°13.73′ W long.

(v) *Half Moon Bay.* The boundary of the Half Moon Bay EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 37°18.14′ N lat., 122°31.15′ W long.;
(2) 37°19.80′ N lat., 122°34.70′ W long.;
(3) 37°19.28′ N lat., 122°38.76′ W long.;
(4) 37°23.54′ N lat., 122°40.75′ W long.;
(5) 37°25.41′ N lat., 122°33.20′ W long.;
(6) 37°23.28′ N lat., 122°30.71′ W long.;
and connecting back to 37°18.14′ N lat., 122°31.15′ W long.

(w) *Pescadero Reef.* The boundary of the Pescadero Reef EFHCA is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by connecting the following coordinates in the order stated:
(1) 37°17.18′ N lat., 122°28.34′ W long.;
(2) 37°17.76′ N lat., 122°29.59′ W long.;
(3) 37°19.38′ N lat., 122°29.63′ W long.; and
(4) 37°19.50′ N lat., 122°28.00′ W long.;

(x) *Pigeon Point Reef.* The boundary of the Pigeon Point EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 37°06.02′ N lat., 122°28.14′ W long.;
(2) 37°08.91′ N lat., 122°31.76′ W long.;
(3) 37°10.29′ N lat., 122°29.70′ W long.;
(4) 37°07.20′ N lat., 122°26.82′ W long.;
and connecting back to 37°06.02′ N lat., 122°28.14′ W long.

(y) *Ascension Canyonhead.* The boundary of the Ascension Canyonhead EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 36°56.88′ N lat., 122°24.84′ W long.;
(2) 36°57.30′ N lat., 122°26.36′ W long.;
(3) 36°56.65′ N lat., 122°27.06′ W long.;
(4) 37°01.55′ N lat., 122°24.73′ W long.;
(5) 37°01.40′ N lat., 122°24.37′ W long.;
(6) 37°01.00′ N lat., 122°24.35′ W long.;
(7) 37°00.61′ N lat., 122°24.03′ W long.;
(8) 36°59.20′ N lat., 122°24.64′ W long.;
and connecting back to 36°56.88′ N lat., 122°24.84′ W long.

(z) *South of Davenport.* The boundary of the South of Davenport EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 36°54.00′ N lat., 122°13.05′ W long.;
(2) 36°56.79′ N lat., 122°17.91′ W long.;
(3) 36°57.80′ N lat., 122°18.14′ W long.;
(4) 36°57.84′ N lat., 122°17.72′ W long.;
(5) 36°57.38′ N lat., 122°17.05′ W long.;
(6) 36°55.84′ N lat., 122°14.26′ W long.;
(7) 36°54.80′ N lat., 122°12.61′ W long.;
(8) 36°54.49′ N lat., 122°12.48′ W long.;
and connecting back to 36°54.00′ N lat., 122°13.05′ W long.

(aa) *Monterey Bay/Canyon.* The boundary of the Monterey Bay/Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 36°54.17′ N lat., 122°23.68′ W long.;
(2) 36°53.58′ N lat., 122°22.48′ W long.;
(3) 36°52.72′ N lat., 122°22.11′ W long.;
(4) 36°49.09′ N lat., 122°21.84′ W long.;
(5) 36°50.47′ N lat., 122°19.03′ W long.;
(6) 36°49.60′ N lat., 122°15.08′ W long.;
(7) 36°49.37′ N lat., 122°15.20′ W long.;
(8) 36°48.31′ N lat., 122°18.59′ W long.;
(9) 36°45.55′ N lat., 122°18.91′ W long.;
(10) 36°44.32′ N lat., 122°18.49′ W long.;
(11) 36°42.04′ N lat., 122°16.07′ W long.;
(12) 36°40.30′ N lat., 122°13.31′ W long.;
(13) 36°39.88′ N lat., 122°09.69′ W long.;
(14) 36°40.02′ N lat., 122°09.09′ W long.;
(15) 36°40.99′ N lat., 122°08.53′ W long.;
(16) 36°41.30′ N lat., 122°09.35′ W long.;
(17) 36°44.94′ N lat., 122°08.46′ W long.;
(18) 36°46.31′ N lat., 122°05.48′ W long.;
(19) 36°48.50′ N lat., 122°06.02′ W long.;
(20) 36°49.18′ N lat., 122°03.12′ W long.;
(21) 36°47.80′ N lat., 122°02.71′ W long.;
(22) 36°49.60′ N lat., 122°00.85′ W long.;
(23) 36°51.53′ N lat., 121°58.25′ W long.;
(24) 36°50.78′ N lat., 121°56.89′ W long.;
(25) 36°47.39′ N lat., 121°58.16′ W long.;
(26) 36°48.34′ N lat., 121°50.95′ W long.;
(27) 36°47.23′ N lat., 121°52.25′ W long.;
(28) 36°45.60′ N lat., 121°54.17′ W long.;
(29) 36°44.76′ N lat., 121°56.04′ W long.;
(30) 36°41.68′ N lat., 121°56.33′ W long.;
(31) 36°38.21′ N lat., 121°55.96′ W long.; extending along the mainland coast to
(32) 36°25.31′ N lat., 121°54.86′ W long.;
(33) 36°25.25′ N lat., 121°58.34′ W long.;

(34) 36°30.86′ N lat., 122°00.45′ W long.;
(35) 36°30.78′ N lat., 122°01.32′ W long.;
(36) 36°31.22′ N lat., 122°01.35′ W long.;
(37) 36°32.38′ N lat., 122°01.69′ W long.;
(38) 36°35.41′ N lat., 122°04.44′ W long.;
(39) 36°34.69′ N lat., 122°04.99′ W long.;
(40) 36°30.59′ N lat., 122°03.45′ W long.;
(41) 36°30.02′ N lat., 122°09.85′ W long.;
(42) 36°30.23′ N lat., 122°36.82′ W long.;
(43) 36°55.08′ N lat., 122°36.46′ W long.;
(44) 36°54.01′ N lat., 122°29.95′ W long.;
(45) 36°56.65′ N lat., 122°27.06′ W long.;
(46) 36°57.30′ N lat., 122°26.36′ W long.;
(47) 36°56.88′ N lat., 122°24.84′ W long.;
(48) 36°56.53′ N lat., 122°23.58′ W long.;
and connecting back to 36°54.17′ N lat., 122°23.68′ W long.

(bb) *West of Sobranes Point.* The boundary of the West of Sobranes Point EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 36°30.59′ N lat., 122°03.45′ W long.;
(2) 36°25.41′ N lat., 122°13.54′ W long.;
(3) 36°25.71′ N lat., 122°17.22′ W long.;
(4) 36°30.02′ N lat., 122°09.85′ W long.;
and connecting back to 36°30.59′ N lat., 122°03.45′ W long.

(cc) *Point Sur Deep.* The boundary of the Point Sur Deep EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 36°17.95′ N lat., 122°17.13′ W long.;
(2) 36°17.83′ N lat., 122°22.56′ W long.;
(3) 36°22.33′ N lat., 122°22.99′ W long.;
(4) 36°26.00′ N lat., 122°20.81′ W long.;
(5) 36°25.41′ N lat., 122°13.54′ W long.;
and connecting back to 36°17.95′ N lat., 122°17.13′ W long.

(dd) *Big Sur Coast/Port San Luis.* The Big Sur Coast/Port San Luis EFHCA consists of the three adjacent polygons defined in this paragraph, combined.

(1) *Main.* The main EFHCA covers Davidson Seamount, portions of Santa Lucia Bank and Sur Canyon, and is defined by straight lines connecting all of the following points in the order stated:
(i) 36°15.74′ N lat., 121°56.75′ W long.;
(ii) 36°15.84′ N lat., 121°56.35′ W long.;
(iii) 36°14.27′ N lat., 121°53.89′ W long.;
(iv) 36°10.93′ N lat., 121°48.66′ W long.;
(v) 36°07.40′ N lat., 121°43.14′ W long.;
(vi) 36°07.36′ N lat., 121°43.26′ W long.;
(vii) 35°59.00′ N lat., 121°50.49′ W long.;
(viii) 35°55.70′ N lat., 121°50.02′ W long.;
(ix) 35°53.05′ N lat., 121°56.69′ W long.;
(x) 35°38.99′ N lat., 121°49.73′ W long.;
(xi) 35°20.06′ N lat., 121°27.00′ W long.;
(xii) 35°20.39′ N lat., 121°33.08′ W long.;
(xiii) 35°09.72′ N lat., 121°33.92′ W long.;
(xiv) 35°06.21′ N lat., 121°33.51′ W long.;
(xv) 35°04.09′ N lat., 121°32.19′ W long.;
(xvi) 35°02.65′ N lat., 121°30.63′ W long.;
(xvii) 35°02.79′ N lat., 121°26.30′ W long.;
(xviii) 34°58.71′ N lat., 121°24.21′ W long.;
(xix) 34°47.24′ N lat., 121°22.40′ W long.;
(xx) 34°35.70′ N lat., 121°45.99′ W long.;
(xxi) 35°47.36′ N lat., 122°30.25′ W long.;
(xxii) 35°27.26′ N lat., 122°45.15′ W long.;
(xxiii) 35°34.39′ N lat., 123°00.25′ W long.;
(xxiv) 36°01.64′ N lat., 122°40.76’ ‘W long.;
(xxv) 36°17.41′ N lat., 122°41.22′ W long.;
(xxvi) 36°17.83′ N lat., 122°22.56′ W long.;
(xxvii) 36°17.95′ N lat., 122°17.13′ W long.;
(xxviii) 36°13.85′ N lat., 122°15.95′ W long.;
(xxix) 36°12.30′ N lat., 122°10.19′ W long.;
(xxx) 36°09.95′ N lat., 122°03.73′ W long.;
(xxxi) 36°09.93′ N lat., 121°56.57′ W long.;
(xxxii) 36°11.89′ N lat., 121°55.81′ W long.;
(xxxiii) 36°12.58′ N lat., 121°58.55′ W long.;
(xxxiv) 36°13.95′ N lat., 121°58.45′ W long.;
(xxxv) 36°14.84′ N lat., 122°00.28′ W long.;
(xxxvi) 36°15.21′ N lat., 121°58.83′ W long.;
and connecting back to 36°15.74′ N lat., 121°56.75′ W long.

(2) *North.* This area is a northern expansion in the vicinity of Point Sur Platform and is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by connecting the following coordinates in the order stated:
(i) 36°15.74′ N lat., 121°56.75′ W long.;
(ii) 36°15.21′ N lat., 121°58.83′ W long.;
(iii) 36°16.66′ N lat., 122°01.19′ W long.;
(iv) 36°17.95′ N lat., 122°02.25′ W long.;
(v) 36°18.56′ N lat., 122°01.53′ W long.; and
(vi) 36°17.65′ N lat., 121°57.85′ W long.

(3) *Northeast.* This area is a northeastern expansion in the vicinity of Partington Point and Lopez Point and is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by connecting the following coordinates in the order stated:
(i) 36°02.32′ N lat., 121°39.40′ W long.;
(ii) 35°58.89′ N lat., 121°45.38′ W long.;
(iii) 35°59.00′ N lat., 121°50.49′ W long.; and
(iv) 36°07.36′ N lat., 121°43.26′ W long.

(ee) *Davidson Seamount.* The boundary of the Davidson Seamount EFHCA is defined by straight lines connecting the following points in the order stated:
(1) 35°54.00′ N lat., 123°00.00′ W long.;
(2) 35°54.00′ N lat., 122°30.00′ W long.;
(3) 35°30.00′ N lat., 122°30.00′ W long.;
(4) 35°30.00′ N lat., 123°00.00′ W long.;
and connecting back to 35°54.00′ N lat., 123°00.00′ W long.

(ff) *La Cruz Canyon.* The boundary of the La Cruz Canyon EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 35°42.85′ N lat., 121°25.92′ W long.;
(2) 35°42.83′ N lat., 121°26.31′ W long.;
(3) 35°43.63′ N lat., 121°26.92′ W long.;
(4) 35°45.14′ N lat., 121°27.61′ W long.;

(5) 35°46.88′ N lat., 121°27.80′ W long.;
(6) 35°49.15′ N lat., 121°29.43′ W long.;
(7) 35°49.53′ N lat., 121°28.71′ W long.;
(8) 35°49.15′ N lat., 121°27.84′ W long.;
(9) 35°48.68′ N lat., 121°27.58′ W long.;
(10) 35°47.84′ N lat., 121°27.75′ W long.;
(11) 35°46.50′ N lat., 121°26.57′ W long.;
(12) 35°45.40′ N lat., 121°25.99′ W long.;
(13) 35°44.19′ N lat., 121°24.69′ W long.;
(14) 35°43.83′ N lat., 121°26.52′ W long.;
and connecting back to 35°42.85′ N lat., 121°25.92′ W long.

(gg) *West of Piedras Blancas State Marine Conservation Area.* The boundary of the West of Piedras Blancas SMCA EFHCA is defined as the areas within the West Coast EEZ shoreward (east) of a boundary line defined by connecting the following coordinates in the order stated:
(1) 35°39.12′ N lat., 121°20.94′ W long.;
(2) 35°39.11′ N lat., 121°21.32′ W long.;
(3) 35°40.63′ N lat., 121°22.63′ W long.;
(4) 35°42.84′ N lat., 121°23.67′ W long.; and
(5) 35°42.85′ N lat., 121°22.81′ W long.

(hh) *East San Lucia Bank.* The boundary of the East San Lucia Bank EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 34°45.09′ N lat., 121°05.73′ W long.;
(2) 34°39.90′ N lat., 121°10.30′ W long.;
(3) 34°43.39′ N lat., 121°14.73′ W long.;
(4) 34°52.83′ N lat., 121°14.85′ W long.;
(5) 34°52.82′ N lat., 121°05.90′ W long.;
and connecting back to 34°45.09′ N lat., 121°05.73′ W long.

(ii) *Point Conception.* The boundary of the Point Conception EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 34°29.24′ N lat., 120°36.05′ W long.;
(2) 34°28.57′ N lat., 120°34.44′ W long.;
(3) 34°26.81′ N lat., 120°33.21′ W long.;
(4) 34°24.54′ N lat., 120°32.23′ W long.;
(5) 34°23.41′ N lat., 120°30.61′ W long.;
(6) 33°53.05′ N lat., 121°05.19′ W long.;
(7) 34°13.64′ N lat., 121°20.91′ W long.;
(8) 34°40.04′ N lat., 120°54.01′ W long.;
(9) 34°36.41′ N lat., 120°43.48′ W long.;
(10) 34°33.50′ N lat., 120°43.72′ W long.;
(11) 34°31.22′ N lat., 120°42.06′ W long.;
(12) 34°30.04′ N lat., 120°40.27′ W long.;
(13) 34°30.02′ N lat., 120°40.23′ W long.;
(14) 34°29.26′ N lat., 120°37.89′ W long.;
and connecting back to 34°29.24′ N lat., 120°36.05′ W long.

(jj) *Harris Point.* The boundary of the Harris Point EFHCA is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 34°03.10′ N lat., 120°23.30′ W long.;
(2) 34°12.50′ N lat., 120°23.30′ W long.;
(3) 34°12.50′ N lat., 120°18.40′ W long.;
(4) 34°01.80′ N lat., 120°18.40′ W long.;
(5) 34°02.90′ N lat., 120°20.20′ W long.; and
(6) 34°03.50′ N lat., 120°21.30′ W long.

(kk) *Harris Point Exception.* An exemption to the Harris Point reserve, where commercial and recreational take of living marine resources is allowed, exists between the mean high water line in Cuyler Harbor and a straight line connecting all of the following points:
(1) 34°02.90′ N lat., 120°20.20′ W long.; and
(2) 34°03.50′ N lat., 120°21.30′ W long.

(ll) *Richardson Rock.* The boundary of the Richardson Rock EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 34°10.40′ N lat., 120°28.20′ W long.;
(2) 34°10.40′ N lat., 120°36.29′ W long.;
(3) 34°02.21′ N lat., 120°36.29′ W long.;
(4) 34°02.21′ N lat., 120°28.20′ W long.;
and connecting back to 34°10.40′ N lat., 120°28.20′ W long.

(mm) *Scorpion.* The boundary of the Scorpion EFHCA is defined by the mean high water line and a straight line connecting all of the following points in the order stated:
(1) 34°02.94′ N lat., 119°35.50′ W long.;
(2) 34°09.35′ N lat., 119°35.50′ W long.;
(3) 34°09.35′ N lat., 119°32.80′ W long.; and
(4) 34°02.80′ N lat., 119°32.80′ W long.

(nn) *Painted Cave.* The boundary of the Painted Cave EFHCA is defined by the mean high water line and a straight line connecting all of the following points in the order stated:
(1) 34°04.50′ N lat., 119°53.00′ W long.;
(2) 34°05.20′ N lat., 119°53.00′ W long.;
(3) 34°05.00′ N lat., 119°51.00′ W long.; and
(4) 34°04.00′ N lat., 119°51.00′ W long.

(oo) *Anacapa Island.* The boundary of the Anacapa Island EFHCA is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 34°00.80′ N lat., 119°26.70′ W long.;
(2) 34°05.00′ N lat., 119°26.70′ W long.;
(3) 34°05.00′ N lat., 119°21.40′ W long.; and
(4) 34°01.00′ N lat., 119°21.40′ W long.

(pp) *Carrington Point.* The boundary of the Carrington Point EFHCA is defined by the mean high water line and straight lines connecting all of the following points:
(1) 34°01.30′ N lat., 120°05.20′ W long.;
(2) 34°04.00′ N lat., 120°05.20′ W long.;
(3) 34°04.00′ N lat., 120°01.00′ W long.;
(4) 34°00.50′ N lat., 120°01.00′ W long.; and
(5) 34°00.50′ N lat., 120°02.80′ W long.

(qq) *Judith Rock.* The boundary of the Judith Rock EFHCA is defined by the mean high water line and a straight line connecting all of the following points in the order stated:
(1) 34°01.80′ N lat., 120°26.60′ W long.;
(2) 33°58.50′ N lat., 120°26.60′ W long.;
(3) 33°58.50′ N lat., 120°25.30′ W long.; and
(4) 34°01.50′ N lat., 120°25.30′ W long.

(rr) *Skunk Point.* The boundary of the Skunk Point EFHCA is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 33°59.00′ N lat., 119°58.80′ W long.;

(2) 33°59.00′ N lat., 119°58.02′ W long.;
(3) 33°57.10′ N lat., 119°58.00′ W long.; and
(4) 33°57.10′ N lat., 119°58.20′ W long.

(ss) *Footprint.* The boundary of the Footprint EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 33°59.00′ N lat., 119°26.00′ W long.;
(2) 33°59.00′ N lat., 119°31.00′ W long.;
(3) 33°54.11′ N lat., 119°31.00′ W long.;
(4) 33°54.11′ N lat., 119°26.00′ W long.;
and connecting back to 33°59.00′ N lat., 119°26.00′ W long.

(tt) *Gull Island.* The boundary of the Gull Island EFHCA is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 33°58.02′ N lat., 119°51.00′ W long.;
(2) 33°58.02′ N lat., 119°53.00′ W long.;
(3) 33°51.63′ N lat., 119°53.00′ W long.;
(4) 33°51.62′ N lat., 119°48.00′ W long.; and
(5) 33°57.70′ N lat., 119°48.00′ W long.

(uu) *South Point.* The boundary of the South Point EFHCA is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 33°55.00′ N lat., 120°10.00′ W long.;
(2) 33°50.40′ N lat., 120°10.00′ W long.;
(3) 33°50.40′ N lat., 120°06.50′ W long.; and
(4) 33°53.80′ N lat., 120°06.50′ W long.

(vv) *Hidden Reef/Kidney Bank.* The boundary of the Hidden Reef/Kidney Bank EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 33°48.00′ N lat., 119°15.06′ W long.;
(2) 33°48.00′ N lat., 118°57.06′ W long.;
(3) 33°33.00′ N lat., 118°57.06′ W long.;
(4) 33°33.00′ N lat., 119°15.06′ W long.;
and connecting back to 33°48.00′ N lat., 119°15.06′ W long.

(ww) *Catalina Island.* The boundary of the Catalina Island EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 33°34.71′ N lat., 118°11.40′ W long.;
(2) 33°25.88′ N lat., 118°03.76′ W long.;
(3) 33°11.69′ N lat., 118°09.21′ W long.;
(4) 33°19.73′ N lat., 118°35.41′ W long.;
(5) 33°23.90′ N lat., 118°35.11′ W long.;
(6) 33°25.68′ N lat., 118°41.66′ W long.;
(7) 33°30.25′ N lat., 118°42.25′ W long.;
(8) 33°32.73′ N lat., 118°38.38′ W long.;
(9) 33°27.07′ N lat., 118°20.33′ W long.;
and connecting back to 33°34.71′ N lat., 118°11.40′ W long.

(xx) *Santa Barbara.* The Santa Barbara EFHCA is defined by the mean high water line and straight lines connecting all of the following points in the order stated:
(1) 33°28.50′ N lat., 119°01.70′ W long.;
(2) 33°28.50′ N lat., 118°54.54′ W long.;
(3) 33°21.78′ N lat., 118°54.54′ W long.;
(4) 33°21.78′ N lat., 119°02.20′ W long.; and
(5) 33°27.90′ N lat., 119°02.20′ W long.

(yy) *Potato Bank.* Potato Bank is within the Western Cowcod Conservation Area, defined at § 660.70. The boundary of the Potato Bank EFHCA is defined by straight lines connecting all of the following points in the order stated:
(1) 33°11.00′ N lat., 119°55.67′ W long.;
(2) 33°21.00′ N lat., 119°55.67′ W long.;
(3) 33°21.00′ N lat., 119°45.67′ W long.;
(4) 33°11.00′ N lat., 119°45.67′ W long.;
and connecting back to 33°11.00′ N lat., 119°55.67′ W long.

(zz) *Cherry Bank.* Cherry Bank is within the Cowcod Conservation Area West, an area south of Point Conception. The Cherry Bank EFH Conservation Area is defined by straight lines connecting all of the following points in the order stated:
(1) 32°59.00′ N lat., 119°32.05′ W long.;
(2) 32°59.00′ N lat., 119°17.05′ W long.;
(3) 32°46.00′ N lat., 119°17.05′ W long.;
(4) 32°46.00′ N lat., 119°32.05′ W long.;
and connecting back to 32°59.00′ N lat., 119°32.05′ W long.

(aaa) *Cowcod EFHCA East.* The Cowcod EFHCA East is defined by straight lines connecting all of the following points in the order stated:
(1) 32°41.15′ N lat., 118°02.00′ W long.;
(2) 32°42.00′ N lat., 118°02.00′ W long.;
(3) 32°42.00′ N lat., 117°50.00′ W long.;
(4) 32°36.70′ N lat., 117°50.00′ W long.;
(5) 32°30.00′ N lat., 117°53.50′ W long.;
(6) 32°30.00′ N lat., 118°02.00′ W long.;
(7) 32°40.49′ N lat., 118°02.00′ W long.;
and connecting back to 32°41.15′ N lat., 118°02.00′ W long.

(bbb) *Southern California Bight.* The boundary of the Southern California Bight EFHCA is defined as the area that includes all waters within the West Coast EEZ that is: south of a straight line connecting 34°02.65′ N lat., 120°54.25′ W long. and 34°23.09′ N lat., 120°30.98′ W long.; shoreward (east and northeast) of the boundary line approximating the 700-fm (1280-m) depth contour, defined at § 660.76(b) and seaward (south and southwest) of a line defined by the inner boundary of the West Coast EEZ and a series of straight lines connecting the coordinates listed below in the order stated. The straight line segments and coordinates defined below exclude nearshore portions of the West Coast EEZ from this EFHCA.

(1) *Northern Boundary.* The northern boundary of the Southern California Bight EFHCA is a straight line connecting the following points in the order stated.
(i) 34°02.68′ N lat., 120°54.30′ W long.; and
(ii) 34°23.09′ N lat., 120°30.98′ W long.

(2) *Santa Barbara Channel.* In the area of the Santa Barbara Channel, the EFHCA extends seaward/southwest of a boundary line defined by straight lines connecting the following points in the order stated:
(i) 34°02.68′ N lat., 120°54.30′ W long.;
(ii) 34°23.09′ N lat., 120°30.98′ W long.;
(iii) 34°21.64′ N lat., 120°25.32′ W long.;
(iv) 34°23.55′ N lat., 120°15.12′ W long.;
(v) 34°20.15′ N lat., 119°57.09′ W long.;
(vi) 34°16.84′ N lat., 119°49.14′ W long.;
(vii) 34°11.24′ N lat., 119°42.12′ W long.;
(viii) 34°11.30′ N lat., 119°37.11′ W long.;
(ix) 34°09.89′ N lat., 119°29.78′ W long.;

(x) 34°09.19′ N lat., 119°27.45′ W long.;
(xi) 34°04.70′ N lat., 119°15.38′ W long.;
(xii) 34°03.33′ N lat., 119°12.93′ W long.; and
(xiii) 34°02.84′ N lat., 119°07.92′ W long.

(3) *Santa Monica Bay.* In the area of Santa Monica bay, the EFHCA extends seaward/southwest of a boundary line defined by straight lines connecting the following points in the order stated:
(i) 33°58.64′ N lat., 118°44.34′ W long.;
(ii) 33°55.90′ N lat., 118°36.39′ W long.;
(iii) 33°53.54′ N lat., 118°39.81′ W long.;
(iv) 33°50.10′ N lat., 118°36.30′ W long.; and
(v) 33°46.75′ N lat., 118°29.33′ W long.

(4) *San Pedro Bay.* In the area between Long Beach, CA and Newport Beach, CA, the EFHCA extends seaward/southwest of a boundary line defined by straight lines connecting the following points in the order stated:
(i) 33°39.28′ N lat., 118°16.82′ W long.;
(ii) 33°35.78′ N lat., 118°17.28′ W long.;
(iii) 33°33.74′ N lat., 118°12.53′ W long.;
(iv) 33°32.69′ N lat., 118°09.66′ W long.; and
(v) 33°33.70′ N lat., 117°57.43′ W long.

(5) *San Clemente.* In the area between Dana Point, CA and Oceanside, CA, the EFHCA extends seaward/southwest of a boundary line defined by straight lines connecting the following points in the order stated:
(i) 33°24.37′ N lat., 117°42.49′ W long.;
(ii) 33°16.07′ N lat., 117°34.74′ W long.; and
(iii) 33°09.00′ N lat., 117°25.27′ W long.

(6) *San Diego.* In the area west of San Diego, CA, the EFHCA extends seaward/west of a boundary line defined by straight lines connecting the following points in the order stated:
(i) 32°51.02′ N lat., 117°20.47′ W long.;
(ii) 32°46.31′ N lat., 117°23.44′ W long.;
(iii) 32°42.68′ N lat., 117°20.98′ W long.; and
(iv) 32°34.18′ N lat., 117°21.08′ W long.

■ 15. In § 660.111, revise the introductory text and add the definitions of ''Block area closures or BACs'', ''Columbia River Salmon Conservation Zone'', ''Klamath River Salmon Conservation Zone'', and ''Stow or stowed,'' in alphabetical order to read as follows:

§ 660.111 Trawl fishery—definitions.

These definitions are specific to the limited entry trawl fisheries covered in this subpart. General groundfish definitions are found at § 660.11.

* * * * *

Block area closures or *BACs* are a type of groundfish conservation area, defined at § 660.11, bounded on the north and south by commonly used geographic coordinates, defined at § 660.11, and on the east and west by boundary lines approximating depth contours, defined with latitude and longitude coordinates at §§ 660.71 through 660.74. BACs may be implemented or modified, off Oregon and California, as routine management measures, per regulations at § 660.60(c). BACs may vary in their shape and duration. Their shape and effective dates will be announced in the **Federal Register**. BACs may have a specific re-opening date as described in the **Federal Register**, or may be in effect until modified. BACs that are in effect until modified by Council recommendation and subsequent NMFS action are set out in Tables 1 (North) and 1 (South) of this subpart.

* * * * *

Columbia River Salmon Conservation Zone means the ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N lat. to 124°13.30′ W long., then southerly along a line of 167 True to 46°11.10′ N lat. and 124°11′ W long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

* * * * *

Klamath River Salmon Conservation Zone means the ocean area surrounding the Klamath River mouth bounded on the north by 41°38.80′ N lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W long. (approximately 12 nm from shore), and on the south by 41°26.80′ N lat. (approximately 6 nm south of the Klamath River mouth).

* * * * *

Stow or *stowed,* for the purposes of this subpart, means the subject trawl gear is either stored below deck; or, if the gear cannot readily be moved, must be stowed in a secured and covered manner detached from all towing lines so that it is rendered unusable for fishing; or, if remaining on deck uncovered, must be stowed disconnected from the trawl doors with the trawl doors hung from their stanchions.

* * * * *

■ 16. In § 660.112, revise the introductory text and paragraphs (a)(5)(i) through (vii), and remove (a)(5)(viii).

§ 660.112 Trawl fishery—prohibitions.

In addition to the general prohibitions specified in § 660.12 and § 600.725 of this chapter, it is unlawful for any person or vessel to:

* * * * *

(a) * * *
(5) * * *
(i) Operate any vessel registered to a limited entry permit with a trawl endorsement in an applicable GCA (defined at §§ 660.11 and 660.130), except for purposes of continuous transiting (defined at § 660.11), unless all groundfish trawl gear on board is stowed (as defined at § 660.111), or unless otherwise authorized at § 660.130.
(ii) Fish with bottom trawl gear (defined at § 660.11) anywhere within EFH seaward of a line approximating the 700-fm (1,280-m) depth contour, as defined in § 660.76. For the purposes of regulation, EFH seaward of 700-fm (1,280-m) within the EEZ is described at § 660.75.
(iii) Fish with bottom trawl gear (defined at § 660.11) with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within EFH within the EEZ. For the purposes of regulation, EFH within the EEZ is described at § 660.75.
(iv) Fish with bottom trawl gear (defined at § 660.11) with a footrope diameter greater than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within the EEZ shoreward of a line approximating the 100-fm (183-m) depth contour (defined at § 660.73).
(v) Fish with bottom trawl gear (defined at § 660.11), within the EEZ in the following EFHCAs areas (defined at §§ 660.77 and 660.78): Olympic 2, Biogenic 1, Biogenic 2, Quinault Canyon, Grays Canyon, Willapa Canyonhead, Willapa Deep, Biogenic 3, Astoria Deep, Astoria Canyon, Nehalem Bank/Shale Pile, Garibaldi Reef North, Garibaldi Reef South, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Hydrate Ridge, Heceta Bank, Deepwater off Coos Bay, Arago Reef, Bandon High Spot, Rogue Canyon, and Rogue River Reef.
(vi) Fish with bottom trawl gear (defined at § 660.11), other than

demersal seine, unless otherwise specified in this section or § 660.130, within the EEZ in the following EFHCAs areas (defined at § 660.79): Brush Patch, Trinidad Canyon, Mad River Rough Patch, Samoa Deepwater, Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Navarro Canyon, Point Arena North, Point Arena South Biogenic Area, The Football, Gobbler's Knob, Point Reyes Reef, Cordell Bank/Biogenic Area, Rittenburg Bank, Farallon Islands/Fanny Shoal/Cochrane Bank, Farallon Escarpment, Half Moon Bay, Pescadero Reef, Pigeon Point Reef, Ascension Canyonhead, South of Davenport, Monterey Bay/Canyon, West of Sobranes Point, Point Sur Deep, Big Sur Coast/Port San Luis, La Cruz Canyon, West of Piedras Blancas State Marine Conservation Area, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), Cowcod EFHCA Conservation Area East, and Southern California Bight.

(vii) Fish with bottom contact gear (defined at § 660.11) within specific EFHCAs and the DCA, consistent with the prohibitions at § 660.12(a)(4), (16) through (18).

* * * * *

■ 17. In § 660.130, revise paragraphs (a), (c), and (e), and add paragraph (f) to read as follows:

§ 660.130 Trawl fishery—management measures.

(a) *General.* This section applies to the limited entry trawl fishery. Most species taken in the limited entry trawl fishery will be managed with quotas (see § 660.140), allocations or set-asides (see § 660.150 or § 660.160), or cumulative trip limits (see trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (see § 660.60 (h)(5)), seasons (see Pacific whiting at § 660.131(b), subpart D), gear restrictions (see paragraphs (b) and (c) of this section) and closed areas (see paragraphs (c) and (e) of this section and §§ 660.70 through 660.79). The limited entry trawl fishery has gear requirements and harvest limits that differ by the type of groundfish trawl gear on board and the area fished. Groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (e)(1) of this section and § 660.70). The trip limits in Tables 1 (North) and 1 (South) of this subpart applies to vessels participating in the limited entry trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

* * * * *

(c) *Restrictions by limited entry trawl gear type.* Management measures may vary depending on the type of trawl gear (*i.e.,* large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 1 (North) and Table 1 (South) of this subpart provide trip limits that are specific to different types of trawl gear: Large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If Table 1 (North) and Table 1 (South) of this subpart provide gear specific limits or closed areas for a particular species or species group, prohibitions at §§ 660.12 and 660.112(a)(5) apply. Additional conservation areas applicable to vessels registered to limited entry permits with trawl endorsements are listed at paragraph (e) of this section.

(1) *Fishing with large footrope trawl gear*—(i) *North of 46°16′ N lat.* It is unlawful for any vessel using large footrope gear to fish for groundfish shoreward of the trawl RCA, defined at § 660.11 and with latitude and longitude coordinates at §§ 660.71 through 660.74. The use of large footrope gear is allowed where bottom trawling is allowed seaward of the trawl RCA.

(ii) *South of 46°16′ N lat.* It is unlawful for any vessel using large footrope gear to fish for groundfish shoreward of the boundary line approximating the 100 fm (183 m) depth contour defined with latitude and longitude coordinates at § 660.73. The use of large footrope gear is allowed where bottom trawling is allowed seaward of the boundary line approximating the 100 fm (183 m) depth contour.

(2) *Fishing with small footrope trawl gear.* The use of small footrope bottom trawl gear is allowed in all areas where bottom trawling is allowed with the following requirements:

(i) *Fishing with selective flatfish trawl gear.* The use of selective flatfish trawl gear, a type of small footrope trawl gear, is allowed in all areas where bottom trawling is allowed. Selective flatfish trawl gear is required shoreward of the boundary line approximating the 100 fm (183 m) depth contour between 42° N lat. and 40°10′ N lat. and fishing with all other types of small footrope trawl gear is prohibited in this area.

(ii) *Salmon conservation area restrictions.* The use of small footrope trawl, other than of selective flatfish trawl gear, is prohibited inside the Klamath River Salmon Conservation Zone and the Columbia River Salmon Conservation Zone (defined at § 660.131(e)(8)).

(3) *Fishing with limited entry midwater trawl gear*—(i) *North of 40°10′ N lat.,* limited entry midwater trawl gear is required for vessels declared into the Pacific whiting fishery; limited entry midwater trawl gear is allowed for vessels declared into the non-whiting Shorebased IFQ Program during the Pacific whiting primary season.

(ii) *South of 40°10′ N lat.,* vessels declared into limited entry midwater trawl are prohibited from operating, other than for the purpose of continuous transiting with prohibited gear stowed, shoreward of the boundary line approximating the 150 fm (274 m) depth contour, as defined with latitude and longitude coordinates at § 660.73. Vessels declared limited entry midwater trawl may operate seaward of a boundary line approximating the 150 fm (274 m) depth contour. See also paragraph (c)(4)(ii) of this section for additional restrictions.

(4) *More than one type of trawl gear on board.* The trip limits in Table 1 (North) or Table 1 (South) of this subpart must not be exceeded. A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may have more than one type of limited entry trawl gear on board (midwater, large or small footrope, including selective flatfish trawl), either simultaneously or successively, during a cumulative limit period except between 42° N lat. and 40°10′ N lat. as described in this section. If a vessel fishes both north and south of 40°10′ N lat. with any type of small or large footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive cumulative limit associated with the gear on board would apply for that trip and all catch would be counted toward that cumulative limit (See crossover provisions at § 660.60(h)(7)). When operating in an applicable GCA, all trawl gear must be stowed, consistent with prohibitions at § 660.112(a)(5)(i), unless authorized in this section.

(i) *Vessels operating north of 40°10′ N lat.*—(A) *Limited entry bottom trawl gears.* A vessel may have more than one type of limited entry bottom trawl gear on board (large or small footrope, including selective flatfish trawl), either simultaneously or successively, during a

cumulative limit period with the following exception: Between 42° N lat. and 40°10′ N lat. and shoreward of the boundary line approximating the 100 fm (183 m) depth contour defined with latitude and longitude coordinates at § 660.73. In this area, vessels may not have any type of small footrope trawl gear other than selective flatfish trawl gear on board when fishing, per prohibitions at § 660.112(a)(5)(i).

(B) *Limited entry midwater trawl gears.* A vessel may have more than one type of midwater groundfish trawl gear on board, either simultaneously or successively, during a cumulative limit period.

(C) *Limited entry selective flatfish trawl gear.* If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear-cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the trawl RCA or the boundary line approximating the 100 fm (183 m) depth contour defined with latitude and longitude coordinates at § 660.73.

(D) *Cumulative limits.* If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the cumulative limits for that gear. If more than one type of groundfish bottom trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the groundfish bottom trawl gear on board during that cumulative limit period applies for the entire cumulative limit period.

(ii) *Vessels operating south of 40°10′ N lat.-* (A) *Limited entry bottom trawl gears.* A vessel may have more than one type of limited entry bottom trawl gear on board (large or small footrope, including selective flatfish trawl), either simultaneously or successively, during a cumulative limit period.

(B) *Limited entry midwater trawl gear.* Vessels may not operate, other than transiting through, with limited entry midwater trawl gear on board that is not stowed, consistent with § 660.112(a)(5), in the area shoreward of the boundary line approximating the 150 fm (274 m) depth contour defined with latitude and longitude coordinates at § 660.73. If a vessel fishes with limited entry bottom trawl gear in this area, vessels may have midwater trawl gear on board that is stowed, consistent with § 660.112(a)(5), and may fish seaward of the boundary line approximating the 150 fm (274 m) depth contour on the same trip with appropriate declaration changes. Vessels with groundfish on board harvested using limited entry midwater trawl gear may transit the area shoreward of the boundary line approximating the 150 fm (274 m) depth contour defined with latitude and longitude coordinates at § 660.73 if the midwater gear is stowed consistent with § 660.112(a)(5).

* * * * *

(e) *Groundfish conservation areas (GCAs).* GCAs are closed areas, defined at § 660.11, and using latitude and longitude coordinates specified at §§ 660.70 through 660.74. This paragraph describes GCAs applicable to the limited entry trawl fishery, per prohibitions at § 660.112(a)(5), and exceptions to those closures. Vessels with trawl gear on board that is not stowed, as defined at § 660.111, may not operate within a GCA listed in this section, unless authorized in this section. Vessels may not take and retain, possess, or land groundfish taken within an applicable GCA, except as authorized in this paragraph. A vessel authorized to fish within an applicable GCA may simultaneously have other groundfish trawl gear on board the vessel that is unlawful to use for fishing within the applicable GCAs, but only if the prohibited gear is stowed, as defined at § 660.111. Continuous transit, with or without groundfish on board, is allowed within an applicable GCA, only when all prohibited trawl gear on board stowed, as defined at § 660.111. Additional closed areas that specifically apply to vessels using limited entry midwater trawl gear are described at § 660.131(c).

(1) *Cowcod conservation areas (CCAs).* This closure applies to vessels with limited entry trawl gear on board. Limited entry trawl vessels may transit through the Western CCA within the transit corridor, defined at § 660.70.

(2) *Farallon islands.* Under California law, commercial fishing for all groundfish is prohibited around the Farallon Islands, as defined at § 660.70.Vessels may transit through with all trawl gear stowed.

(3) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Banks, defined at § 660.70. Vessels may transit through with all trawl gear stowed.

(4) *Trawl RCA.* This GCA is off the coast of Washington, between the US/Canada border and 46°16′ N lat. Boundaries for the trawl RCA applicable to groundfish trawl vessels throughout the year are provided in the header to Table 1 (North) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c). Prohibitions at § 660.112(a)(5) do not apply under the following conditions and when the vessel has a valid declaration for the allowed fishing:

(i) *Limited entry midwater trawl gear.* Limited entry midwater trawl gear may be used within the trawl RCA by vessels targeting Pacific whiting or non-whiting when it is an authorized gear type for the area and season. If a vessel fishes in the trawl RCA using midwater trawl gear, it may also fish outside the trawl RCA with limited entry trawl gear on the same trip with appropriate declaration changes.

(ii) *Transiting.* A vessel authorized to operate in the trawl RCA may continuously transit through the trawl RCA, with or without groundfish on board, with prohibited trawl gear stowed, as defined at § 660.111.

(5) *Block area closures or BACs.* BACs, defined at § 660.111, are applicable to vessels with groundfish bottom trawl gear on board that is not stowed, per the prohibitions in § 660.112(a)(5). When in effect, BACs are areas closed to bottom trawl fishing. A vessel operating, for any purpose other than continuous transiting, in the BAC must have prohibited trawl gear stowed, as defined at § 660.111. Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area, defined at § 660.11. Prohibitions at § 660.112(a)(5) do not apply under any of the following conditions and when the vessel has a valid declaration for the allowed fishing:

(i) *Limited entry midwater trawl.* Limited entry midwater trawl gear may be used within the BAC only when it is an authorized gear type for the area and season. If a vessel fishes in the BAC using midwater trawl gear, it may also fish outside the BAC with groundfish bottom trawl gear on the same trip with appropriate declaration changes.

(ii) *Transiting.* A vessel authorized to operate in a BAC may continuously transit through the BAC, with or without groundfish on board, with prohibited trawl gear stowed, as defined at § 660.111.

(iii) *Multiple gears.* If a vessel fishes in a BAC using midwater trawl gear, it may also fish outside the BAC with groundfish bottom trawl gear on the same trip with the appropriate declaration change.

(6) *Bycatch reduction areas or BRAs.* Vessels using midwater groundfish trawl gear during the applicable Pacific whiting primary season may be prohibited from fishing shoreward of a

boundary line approximating the 75 fm (137 m), 100 fm (183 m), 150 fm (274 m), or 200 fm (366 m) depth contours.

(7) *Eureka management area midwater trawl trip limits.* No more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished with midwater groundfish trawl gear in the fishery management area shoreward of the boundary line approximating the 100 fm (183 m) depth contour in the Eureka management area, defined at § 660.11. See also midwater trawl depth restrictions in paragraph (c) of this section.

(8) *Salmon conservation zones.* Fishing with midwater trawl gear and bottom trawl gear, other than selective flatfish trawl gear, is prohibited in the Klamath River Salmon Conservation Zone and the Columbia River Salmon Conservation Zone (defined at § 660.111).

(f) *Essential fish habitat conservation areas.* EFHCAs are defined at § 660.11 and at §§ 660.76 through 660.79. EFHCAs apply to vessels using bottom trawl gear or to vessels using bottom contact gear, defined at § 660.11. Vessels may transit through, with or without groundfish on board, with all prohibited gear stowed. EFHCAs closed to bottom trawl gear are listed at § 660.112(a)(5)(v). EFHCAs off California that are closed to bottom trawl gear, except vessels fishing with a valid declaration for demersal seine gear, are listed in § 660.112(a)(5)(vi). EFHCAs closed to bottom contact gear are listed at § 660.12(a)(4), (16) and (17).

* * * * *

■ 18. In § 660.131 revise paragraph (c) to read as follows.

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(c) *Closed areas.* The conservation areas described here are in addition to conservation areas applicable to vessels operating with midwater trawl gear on board described in § 660.130(c) and (e). Vessels fishing during the Pacific whiting primary seasons shall not target Pacific whiting with midwater groundfish trawl gear in the following portions of the fishery management area:

(1) *Klamath river salmon conservation zone,* defined at § 660.111.

(2) *Columbia river salmon conservation zone,* defined at § 660.111.

(3) *Bycatch reduction areas or BRAs.* Bycatch reduction area closures specified at § 660.130(e) may be implemented inseason through automatic action when NMFS projects that a Pacific whiting sector will exceed an allocation for a non-whiting groundfish species specified for that sector before the sector's whiting allocation is projected to be reached.

* * * * *

■ 19. Table 1 (North) to part 660, subpart D, is revised to read as follows:

Tables 1 (North) to Part 660, Subpart D—Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for Non-IFQ Species and Pacific Whiting North of 40°10′ N Lat

Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish bottom trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table AM28PR

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	100 fm line[1/] - 150 fm line[1/]					
	See provisions at § 660.130(c) and (e) for gear restrictions and requirements by area. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry f+B43ixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.						
	See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §660.11, §§660.70-660.74, §§ 660.76-660.79 and §660.111 for Conservation Area Definitions and Coordinates.						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Minor Nearshore Rockfish & Washington black rockfish & Oregon black/blue/deacon Rockfish**	300 lb/ month					
3	**Whiting[2/]**						
4	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
5	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
6	**Oregon Cabezon/Kelp Greenling Complex**	50 lb/ month					
7	**Cabezon in California**	50 lb/ month					
8	**Shortbelly rockfish**	Unlimited					
9	**Spiny dogfish**	60,000 lb/ month					
10	**Big skate**	5,000 lb/ 2 months	25,000 lb/ 2 months	30,000 lb/ 2 months	35,000 lb/ 2 months	10,000 lb/ 2 months	5,000 lb/ 2 months
11	**Longnose skate**	Unlimited					
12	**Other Fish [3/]**	Unlimited					

TABLE 1 (North)

1/ The Rockfish Conservation Area is a type of Groundfish Conservation Area, defined at §660.11, and defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. See §§660.112 and 660.130 for more information.

2/ As specified at §660.131(d), when fishing in the Eureka Area, no more than 10,000 lb of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during the fishing trip, fished in the fishery management area shoreward of 100 fm contour.

3/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 20. Table 1 (South) to part 660, subpart D, is revised to read as follows:

Table 1 (South) to Part 660, Subpart D—Limited Entry Trawl Landing Allowances for Non-IFQ Species and Pacific Whiting South of 40°10′ N Lat

Table 1 (South) to Part 660, Subpart D -- Limited Entry Trawl Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10' N. Lat.

This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table

AM28PR

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
See provisions at §660.130(c) and (e) for gear restrictions and requirements by area. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear swi+B24tching provisions at §660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at §660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E							
See §660.60, §660.130, and §660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §660.11, §§660.70-660.74, §§660.76-660.79 and §660.111 for Conservation Area Definitions and Coordinates. B48							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
1	**Longspine thornyhead**						
2	South of 34°27' N. lat.	24,000 lb/ 2 months					
3	**Minor Nearshore Rockfish & California black rockfish, & Oregon black/blue/deacon rockfish**	300 lb/ month					
4	**Whiting**						
5	midwater trawl	During the primary whiting season: allowed with the depth restrictions described at § 660.130(c).					
6	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
7	**Cabezon**	50 lb/ month					
8	**Shortbelly rockfish**	Unlimited					
9	**Spiny dogfish**	60,000 lb/ month					
10	**Big skate**	5,000 lb/ 2 months	30,000 lb/ 2 months	35,000 lb/ 2 months	40,000 lb/ 2 months	15,000 lb/ 2 months	5,000 lb/ 2 months
11	**Longnose skate**	Unlimited					
12	**California scorpionfish**	Unlimited					
13	**Other Fish** [1/]	Unlimited					

1/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.B48

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

TABLE 1 (South)

■ 21. In § 660.212, revise the introductory text and paragraph (c)(2), and remove paragraph (c)(3) to read as follows:

§ 660.212 Fixed gear fishery—prohibitions.

These prohibitions are specific to the limited entry fixed gear fisheries and to the limited entry trawl fishery Shorebased IFQ Program under gear switching. In addition to the general prohibitions specified in §§ 660.12 and 600.725 of this chapter, it is unlawful for any person to:

* * * * *

(c) * * *

(2) Fish with bottom contact gear (defined at § 660.11) within specific EFHCAs or the DCA, as specified in § 660.12(a).

* * * * *

■ 22. Amend § 660.230 by:

■ a. Revising the introductory text for paragraph (d) and paragraphs (d)(10) and (11);

■ b. Removing paragraph (d)(14);

■ c. Adding paragraph (g).

The revisions and additions read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(d) *Groundfish conservation areas.* GCAs are defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74. A vessel that is authorized by this paragraph to fish within a GCA (*e.g.,* fishing for ''other flatfish'' using no more than 12 hooks, ''Number 2'' or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the limited entry fixed gear fishery.

* * * * *

(10) *Cowcod Conservation Areas.* It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in the transit corridor, defined at § 660.70. Fishing with limited entry

fixed gear is prohibited within the CCAs, except as follows:

* * * * *

(11) *Nontrawl Rockfish Conservation Area (RCA).* The nontrawl RCA is defined at § 660.11 and with latitude and longitude coordinates, at §§ 660.71 through 660.74, where fishing for groundfish with nontrawl gear is prohibited. Boundaries for the nontrawl RCA throughout the year are provided in the header to Table 2 (North) and Table 2 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.60(c).

* * * * *

(g) *Essential Fish Habitat Conservation Areas (EFHCA).* EFHCAs, defined at § 660.11 and with latitude and longitude coordinates at §§ 660.75 through 660.79, apply to vessels using bottom contact gear, defined at § 660.11, and includes limited entry fixed gear (*e.g.* longline and pot/trap,) among other gear types. EFHCAs closed to bottom contact gear are listed at § 660.12(a).

■ 23. Amend § 660.312 by revising the introductory text and paragraphs (d)(3) and (4), and adding paragraphs (d)(5) through (7), to read as follows:

§ 660.312 Open access fishery—prohibitions.

In addition to the general prohibitions specified in §§ 660.12 and 600.725 of this chapter, it is unlawful for any person to:

* * * * *

(d) * * *

(3) Fish with bottom contact gear (defined at § 660.11) within specific EFHCAs or the DCA, as specified in § 660.12(a).

(4) Fish with bottom trawl gear (defined at § 660.11) anywhere within EFH seaward of a line approximating the 700-fm (1280-m) depth contour, as defined in § 660.76. For the purposes of regulation, EFH seaward of 700-fm (1280-m) within the EEZ is described at § 660.75.

(5) Fish with bottom trawl gear (defined at § 660.11) with a footrope diameter greater than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope) anywhere within the EEZ shoreward of a line approximating the 100-fm (183-m) depth contour (defined at § 660.73).

(6) Fish with bottom trawl gear (defined at § 660.11), within the EEZ in the following EFHCAs (defined at §§ 660.77 and 660.78): Olympic 2, Biogenic 1, Biogenic 2, Quinault Canyon, Grays Canyon, Willapa Canyonhead, Willapa Deep, Biogenic 3, Astoria Deep, Astoria Canyon, Nehalem Bank/Shale Pile, Garibaldi Reef North, Garibaldi Reef South, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Hydrate Ridge, Heceta Bank, Deepwater off Coos Bay, Arago Reef, Bandon High Spot, Rogue Canyon, and Rogue River Reef.

(7) Fish with bottom trawl gear (defined at § 660.11), other than demersal seine, unless otherwise specified in this section or § 660.330, within the EEZ in the following EFHCAs (defined at § 660.79): Brush Patch, Trinidad Canyon, Mad River Rough Patch, Samoa Deepwater, Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Navarro Canyon, Point Arena North, Point Arena South Biogenic Area, The Football, Gobbler's Knob, Point Reyes Reef, Cordell Bank/Biogenic Area, Rittenburg Bank, Farallon Islands/Fanny Shoal/Cochrane Bank, Farallon Escarpment, Half Moon Bay, Pescadero Reef, Pigeon Point Reef, Ascension Canyonhead, South of Davenport, Monterey Bay/Canyon, West of Sobranes Point, Point Sur Deep, Big Sur Coast/Port San Luis, La Cruz Canyon, West of Piedras Blancas State Marine Conservation Area, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), Cowcod EFHCA Conservation Area East, and Southern California Bight.

■ 24. Amend § 660.330 by:

■ a. Revising the introductory text for paragraph (d) and paragraph (d)(11),

■ b. Removing paragraph (d)(16), and

■ c. Adding paragraph (g).

The additions and revisions read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(d) *Groundfish conservation areas (GCAs).* GCAs, a type of closed area, are defined at § 660.11 and with latitude and longitude coordinates at §§ 660.70 through 660.74. A vessel that is authorized by this paragraph to fish within a GCA (*e.g.* fishing for ''other flatfish'' using no more than 12 hooks, ''Number 2'' or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the open access groundfish fishery.

* * * * *

(11) *Cowcod Conservation Areas (CCAs).* It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in the transit corridor, defined at § 660.70. Fishing with open access gear is prohibited in the CCAs, except as follows:

* * * * *

(g) *Essential fish habitat conservation areas (EFHCA).* EFHCAs, defined at § 660.11 and with latitude and longitude coordinates at §§ 660.75 through 660.79, apply to vessels using bottom trawl gear or bottom contact gear, defined at § 660.11, and includes non-groundfish trawl gear and limited entry fixed gear (*e.g.* longline and pot/trap,) among other gear types. EFHCAs closed to bottom contact gear are listed at § 660.12(a). EFHCAs closed to bottom trawl gear are listed at § 660.312(d).

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Part III

Department of Housing and Urban Development

24 CFR Parts 203, 206, and 234

Project Approval for Single-Family Condominiums; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203, 206, and 234

[Docket No. FR–5715–F–02]

RIN 2502–AJ30

Project Approval for Single-Family Condominiums

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements HUD's authority under the single-family mortgage insurance provisions of the National Housing Act to insure one-family units in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities which serve the project. The rule provides for requirements for lenders to obtain approval under the Direct Endorsement Lender Review and Approval Process (DELRAP) authority for condominiums, and for standards that projects must meet to be approved for mortgage insurance on individual units. The rule provides for flexibility with respect to the concentration of Federal Housing Administration (FHA)-insured units, owner-occupied units, and the amount that can be set aside for commercial and non-residential space. This will enable HUD to vary these standards, within parameters, to meet market needs. This final rule follows a proposed rule published in the **Federal Register** on September 28, 2016.

DATES: The effective date of this rule and the related handbook is October 15, 2019.

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 2117 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289) (HERA) amended the definition of ''mortgage'' in section 201(a) of the National Housing Act (12 U.S.C. 1707(a)) to provide authority for HUD to insure individual condominium units under the single-family program under section 203 of the National Housing Act (12 U.S.C. 1709). At the same time, HERA amended HUD's prior authority for condominium units, section 234 of the National Housing Act (12 U.S.C. 1715y), to require a blanket mortgage for the project. Due to this change and other restrictive requirements under section 234, the single-family mortgage insurance program under section 203 became the primary vehicle for FHA mortgage insurance for units in condominium projects.

Section 2132 of HERA also provided for implementation of section 2117 by notice. Accordingly, HUD issued mortgagee letters implementing the program (2009–46a, 2009–46b, and 2011–03). These were then consolidated into the Condominium Project Approval and Processing Guide (the Guide), the current operational guideline for the program.

The Housing Opportunities Through Modernization Act of 2016 (Pub. L. 114–201) (HOTMA) became law on July 29, 2016. Title III of HOTMA established by statute certain requirements. Among these was a requirement that HUD issue a regulation within 90 days from enactment (*i.e.,* by October 27, 2016), requiring that any requests for exceptions to the limitation on commercial space be processed under either the DELRAP or HUD review and approval process (HRAP), and that in determining whether to grant the exception, factors related to the economy of the local area of the project, or to the project itself, be considered. The statute also required HUD, by regulation or less formal means, including a mortgagee letter, to establish an owner-occupancy requirement, also in the same time frame. If HUD failed to do so, the statute provided that the minimum owner-occupancy percentage for a project would be 35 percent of all family units, including those not covered by an FHA-insured mortgage. On October 26, 2016, HUD issued the required mortgagee letter, establishing the general owner-occupancy percentage for an existing project at 50 percent, unless certain specific indicators were met indicating lower risk, and allowing for review by HUD under HRAP, in which case the requirement could be as low as 35 percent.

Title III of HOTMA also provided for changes to HUD's treatment of private transfer fees (these are in effect based on statutory authority and are not part of this rulemaking).

II. The Proposed Rule

HUD issued the proposed rule on September 28, 2016 (81 FR 66565), both to codify the program, and, based on experience, to offer greater flexibilities and efficiencies that would increase participation in the program and make it more responsive to changes in the marketplace.

A. DELRAP

The rule proposed that participants in DELRAP must: Be a Direct Endorsement (DE) lender under 24 CFR 203.3: Have a one-year experience requirement for all staff participating in DELRAP approvals; have originated no fewer than 10 FHA condominium loans; and have an acceptable quality control plan. There is also a process for first obtaining conditional DELRAP authority before obtaining unconditional authority based on performance, and periodic performance monitoring. As proposed, HUD can take action based on non-performance, legal or rules violations, including any action listed in § 203.3(d), or termination of DELRAP authority. The proposed rule also established a process for reinstatement.

B. Definitions

The rule proposed new definitions for a number of terms, including Condominium Association (or Association), Condominium Project, Condominium Unit, Infrastructure, Single-Unit Approval (SUA), and Site Condominium. The definition of Condominium Association makes clear that the homeowners who manage the financial and common areas of the condominium project are the Condominium Association as meant by this rule, regardless of the name used. The proposed definition of Condominium Project and Condominium Unit are based on 12 U.S.C. 1707(a), which is also the usual usage of that term in the industry. The proposed definition of Infrastructure, which is related to the requirement in § 203.43b(d)(4) of this rule, that the project or legal phase be complete and ready for occupancy, includes utilities, common elements, and amenities, such as parking lots, swimming pools, golf courses, playgrounds and similar items called for in the project or legal phase. The proposed definition of Single-Unit Approval is approval of one unit, in accordance with § 203.43b(i) of this rule, in an unapproved project. The proposed definition of Site Condominium is a single-family detached dwelling (without any shared garages or attached buildings), including the site and air space, which is

encumbered by a declaration of condominium covenants or condominium form of ownership. Finally, this rule adopts the definition of Rental for Transient or Hotel Purposes in section 513(e) of the National Housing Act (12 U.S.C. 1731b(e)).

C. Eligibility for Approval

Section 203.43b(c), as proposed, would require approval by HUD (HRAP) or by a mortgagee (DELRAP). Otherwise, the project would have to meet the additional requirements for a Site Condominium or for Single-Unit Approval. To be approvable, the project would have to meet the eligibility requirements of § 203.43b(d) of this rule. These include: Being primarily residential in nature; consisting entirely of dwelling units that are one-family units; being in full compliance with applicable laws and local approval requirements with respect to the condominium plat and development plans; and being complete and ready for occupancy, and not subject to further rehabilitation, construction, phasing, or annexation (if the construction consists of legal phases, this requirement and the requirements of § 203.43b(e) of this rule applies to each phase). In addition, the rule proposed that HUD may establish further requirements for eligibility through notices under § 203.43b(d)(6), such as insurance requirements, financial condition, nature of title, the existence of any pending legal action or physical property condition (§ 203.43b(d)(6)(i) through (vi)), and such other matters as may affect the viability or marketability of the project or its units (proposed § 203.43b(d)(6)(xi)).

D. Flexibility

The rule proposed to grant flexibility in three key areas, to allow HUD to respond quickly to changes in market conditions. The three areas are the amount of commercial/non-residential space; the maximum percentage of FHA-insured units; and the minimum percentage of owner-occupied units (§ 203.43b(d)(6)(vii), (viii), and (ix)). Within each range, HUD may from time to time issue a notice establishing a particular percentage or percentages. As proposed, the ranges are: For commercial space, between 25 and 60 percent of the total floor area; for units with FHA-insured mortgages, between 25 and 75 percent of the total number of units in the project; and for owner-occupied units, likewise between 25 and 75 percent of the total units. Changes in the upper and lower limits of the ranges would be published for 30 days of public comment (§ 203.43b(f)).

E. Legal Phasing

As proposed, legal phasing only would be permitted as long as the phase is fully built out and the dwelling units have a certificate of occupancy (CO). Both vertical buildings and detached or semi-detached developments would be required to be contiguous (§ 203.43b(e)).

F. Reserve Requirements

Generally, the proposed reserve requirement would be at least 10 percent of the monthly unit assessments. A lower amount could be deemed acceptable by HUD based on a reserve study completed not more than 24 months before a request for a lower reserve amount is received (§ 203.43b(d)(6)(x)).

G. Exceptions

The rule provided in proposed § 203.43b(f) (§ 203.43b(g) of this final rule) that the Secretary may discretionarily grant an exception to the requirements found in § 203.43b(d)(6), provided that the statutory conditions for exceptions to the commercial space requirements enacted under HOTMA and codified under 12 U.S.C. 1709(y)(2) are met. These are that the request and disposition of the request for the exception may be made at the option of the requester under the DELRAP or HRAP process; and that in determining whether to allow the exception, factors relating to the economy for the locality in which the project is located or specific to the project, including the total number of family units in the project, shall be considered.

H. Recertification

The rule proposed to extend the recertification period for an approved project from 2 to 3 years, and allow recertification by updating previously submitted information, rather than resubmission of all information. There would be a window of 6 months before to 6 months after the expiration of approval to submit a request for recertification.

I. Single-Unit Approval

The rule proposed in § 203.43b(h) (§ 203.43b(i) of this final rule) to allow approvals on individual units that are not in approved projects and not in projects that have been subject to adverse determination for significant issues that affect the viability of the project. The project must be complete and ready for occupancy under § 203.43b(d)(4), must not be a manufactured home, and must have at least five dwelling units. The upper limit on single-unit approvals as proposed would be in a range from 0 to 20 percent of the total number of units in the project, the exact percentage to be established by HUD through notice.

J. Site Condominium

The rule proposed at § 203.43b(i) (§ 203.43(j) of this final rule) that for Site Condominiums, insurance and maintenance costs must be the responsibility of the unit owner, and that any common assessment collected must be restricted for use solely for amenities outside the footprint of the individual site.

K. Rehabilitation Loans

The rule proposed to revise 24 CFR 203.50 to permit FHA insurance under the 203(k) program for loans to rehabilitate the interior space or install firewalls in the attic of a condominium unit. Such FHA mortgage insurance would not cover any exteriors or areas that are the responsibility of the Association. The loan limits would be those stated in § 203.50(f), and for condominiums that are not manufactured homes, townhouses, or Site Condominiums, 100 percent of the after-improvement value of the condominium unit.

L. Part 234

As provided in the proposed rule, part 234 now will apply in cases where the project has a blanket mortgage insured by HUD. This part 203 applies to the more usual condominium configuration, that is, a one family unit and undivided interest in the common areas and facilities.

III. This Final Rule

After further consideration, including careful consideration of public comments, HUD has made some changes in this final rule.

A. DELRAP Qualifications

HUD received multiple comments concerning the proposal to only allow staff meeting the experience requirement to use DELRAP authority to approve Condominium Projects. Commenters indicated that the proposed credential requirements impose a barrier for smaller lenders to fully participate in the DELRAP program. Given the comments received, where HUD had proposed that all staff involved in DELRAP activities had to meet the experience requirements, the final rule revises proposed § 203.8(b)(1)(iv) to allow participation by staff supervised by personnel that meet the experience requirements in

response to public comments. Also, the proposed rule provided that, to be granted unconditional DELRAP authority, a lender would have to complete at least five DELRAP reviews. HUD recognized that such a requirement may not always be necessary; therefore, this final rule, in § 203.8(b)(3), gives HUD the flexibility to reduce this number where appropriate, for example, in the case of a DELRAP lender with significant experience under the current program. This will ease potential burdens on lenders who wish to participate and who have qualified supervisor personnel.

B. Definitions

The definitions in § 203.43b(a) of ''Condominium Project'' and ''Condominium Unit'' have been reworded and reorganized. Substantively, the definition of ''Infrastructure'' is removed and a definition of ''Common Elements'' is added. In addition to typical items, the definition includes a catch-all, ''other areas described in the condominium declaration.''

The definition of ''Site Condominium'' is revised to address the problems with air space that the public comments identified, and to allow for different Site Condominium arrangements existing in the marketplace that can potentially be approved. The inclusion of air space in the proposed rule was identified in public comments to potentially create conflicts with laws of certain states.

C. Suspension of FHA Case Numbers

HUD currently monitors FHA insurance concentration for projects that are, or have been, FHA approved. With the introduction of the Single-Unit Approval process, HUD recognizes the need to enhance the insurance concentration tracking mechanism to determine compliance with the concertation ranges allowed. A commenter also noted the importance of having a reliable tracking system in place and available to the public to track percentages of single-unit approvals. In the context of the maximum percentage of units with FHA-insured mortgages under § 203.43b(d)(6)(viii), and in the context of single-unit approvals under § 203.43b(i)(2), this final rule adds a statement that ''HUD may suspend the issuance of new FHA case numbers for a mortgage on a property located in any project where the number of FHA-insured mortgages exceeds the maximum.'' The maximum percentages that apply will be established by notice. This additional provision to the final rule will allow FHA to build a robust process to proactively manage FHA insurance concentration while recognizing the need for lenders to operationalize the impact of such a requirement early in the loan lifecycle so as not to affect the origination process.

D. Secondary Residences

The proposed rule provided that units occupied as a principal or secondary residence as defined under § 203.18(f)(2) would count towards the required minimum percentage of owner-occupied units. As commenters indicated, the definition established under § 203.18(f)(2), which establishes the definition for the purpose of permitting FHA financing on a secondary residence which requires analysis of the lack of affordable rental housing is too restrictive and out of scope in the context in which HUD or the DELRAP lender is looking at the owner-occupancy level of the project to determine whether the *project* is approved. Thus, solely to calculate owner-occupancy percentage, this final rule provides that any unit that is occupied by the owner as his or her place of abode for any portion of the calendar year other than as a principal residence and that is not rented for a majority of the calendar year shall count towards the total number of owner-occupied units. While such a definition for the purpose of calculating owner occupancy for condominium project approval is more expansive, the definition in § 203.18(f)(2) will continue to be used when determining eligibility of mortgage secured by a borrower's secondary residence.

E. Reserve Study

The proposed rule in § 203.43b(d)(6)(xi) stated that for an approvable project to have less than 10 percent of the monthly unit assessments in a reserve account, the lesser amount would have to be based on a reserve study completed within 24 months of the request for the lower amount. The final rule, in § 203.43b(d)(6)(x), enlarges this time to 36 months, or, in the case of HRAP, such greater amount of time as the Secretary determines. This change conforms with HOTMA's requirement that HUD streamlines the recertification process for approved properties by considering lengthening the time between certifications, *see* 12 U.S.C. 1709(y)(1).

F. Eligibility for Approval: Financial Condition

The final rule states that the financial condition component of the further approval requirements in § 203.43b(d)(6)(v) includes the allowable percentage of units in a project owned by a single owner. This comports with current practice in the marketplace and was recognized as a key policy consideration to prevent a financial shock that may occur in the event of an economic failure by a single owner with a large share of units in a complex.

G. Percentage Ranges

This final rule, following the proposed rule, sets a range within which HUD may make specific determinations on minimum owner-occupancy percentage, maximum FHA-insured mortgage percentage for project approval, maximum FHA-insured mortgage percentage for Single-Unit Approval, and maximum percentage of floor area taken by commercial or nonresidential space. There is an ability to grant case-by case exceptions to any of these ranges under § 203.43b(g). Additionally, if HUD determines to adjust the upper or lower limits of these ranges, the rule provides for a public comment process under § 203.43b(f). HUD may establish multiple limits within a range for owner-occupancy and commercial space for differently situated projects. For example, the owner occupancy limit may be established differently for newly constructed projects, in which a number of units likely would not yet have transferred to first owners, and for existing projects, which are more likely fully sold.

This final rule makes some minor changes to the proposed rule regarding the percentage ranges of owner-occupants and commercial/nonresidential space. In the case of the maximum allowed percentage of units with FHA-insured mortgages for project approval, this final rule makes no change.

1. Owner Occupancy

The possible range for the minimum level of required owner-occupancy for project approval is narrowed slightly; the floor is set at 30 percent in this final rule. This is in part because under current HUD practice, the minimum owner occupancy percentage for new construction is 30 percent of the total units, and the lower end of the range must be set to accommodate newly constructed projects. In part, it provides FHA with additional room to calibrate this requirement to a level below that identified in HOTMA (35 percent) as the default, if necessary, in response to housing market changes. A 30 percent owner occupancy percentage is the

lowest limit compatible with risk to the Mutual Mortgage Insurance Fund (MMIF).

The upper limit of 75 percent remains unchanged from the proposed rule. This upper limit flexibility is necessary to manage risk. Unlike Fannie Mae and Freddie Mac (which require 50 percent owner occupancy for certain types of projects [1]), HUD cannot require larger down payments or higher credit scores, but must manage risk to the MMIF in other ways. Depending on future market conditions, flexibility to require 75 percent owner occupancy is needed if it is determined that a lower owner-occupancy rate is contributing to loan delinquency.

If HUD determines to change the owner-occupancy threshold within these limits, it will examine a variety of market factors. These will generally include:

- FHA portfolio analysis of default and claim rates of loans with similar attributes across different bands of owner occupancy percentages. The bands would be, for example, 10 percent bands of owner occupancy percentages.
- Analysis of FHA condominium loans across geographical areas segmented by average owner occupancy ratios (*e.g.,* average owner occupancy ratios in metropolitan areas versus rural areas).
- Analysis of trends of financial stability of condo projects in relation to owner occupancy (*e.g.,* relationship of default and claim rates when compared with factors that determine financial stability and owner occupancy percentages).

HUD may consider other relevant factors as well.

2. Maximum Commercial/ Nonresidential Space

This final rule reduces the maximum commercial space percentage upper limit to 55 percent of the total floor area. While there was substantial support for a 50 percent limit on nonresidential commercial space, a number of public comments supported a maximum limit for commercial space above 50 percent. There are many potential benefits of mixed-use development, and recent real estate trends studies support continued demand for these types of projects.[2] The 55 percent ceiling would give HUD future room to grant an exception under HRAP where HUD's review shows that a specific case warrants it (or, under DELRAP review in the case where the exception is at the request of an eligible party and the requester asks for DELRAP review under 12 U.S.C. 1709(y)(2)(A)), while still maintaining the overall residential character of the project.

The lower limit of the range for the maximum allowable commercial space remains at the proposed 25 percent. This percentage aligns with the historical maximum commercial space allowed in a condominium project across the industry. However, mixed-use development is an upward trend in the marketplace.[3] Fannie Mae recently increased the maximum percentage of commercial space in a condominium to 35 percent from 25 percent,[4] consistent with this upward trend. This is also consistent with the *Emerging Trends in Real Estate®* report, which states that there is a trend toward mixed-use development with a mixture of residential, with retail and other commercial uses.[5] HUD believes that 25 percent of commercial/nonresidential space of the projects total floor area sets the historical lowest maximum for a mixed-use project that has been used for the program to be successful. The maximum percent of commercial/non-residential space will be established within this range considering current and projected real estate market trends.

The data which HUD will consider when changing the specific percentage of commercial space allowed for project approval, within the permitted range, will generally include:

- FHA portfolio analysis of default and claim rates of loans with similar attributes across different bands of commercial/nonresidential space percentages (*e.g.,* default and claim rates for purchase transactions at commercial/nonresidential percentages in appropriate percentage bands that HUD will select.
- Analysis of FHA condominium loans across geographical areas segmented by average commercial/ nonresidential space percentages (*e.g.,* average commercial/nonresidential space percentages in metropolitan areas versus rural areas).
- Analysis of trends of financial stability of condo projects in relation to commercial/nonresidential space percentages (*e.g.,* relationship of default and claim rates when compared with the percentage of the residential portion of the project financial stability and the commercial/nonresidential space percentage).

HUD may consider other relevant factors as well.

3. Maximum FHA-Insured Concentration for Project Approval

The final rule makes no change to the 25-to-75 percent range proposed for the maximum FHA insurance concentration requirement. The upper limit of 75 percent is the maximum risk exposure to the MMIF that HUD is willing to accept. At the same time, the range must be wide enough to accommodate qualified borrowers in multiple markets where access to affordable housing and financing may be difficult.

In changing the maximum amount of units with FHA mortgage insurance for project approval within the allowable range, data points will generally include:

- Analysis of FHA market share of condominium loans versus market share of non-condo loans.
- Analysis of FHA market share of condominium loans versus market share of non-FHA condo loans.
- Analysis of default and claim rates of loans with similar attributes across different bands of FHA concentration percentages.
- Analysis of FHA concentration percentages segmented by geographical areas.
- Analysis of performance of FHA condo to non-FHA condo loans.

HUD may consider other relevant factors as well.

4. Maximum FHA-Insured Concentration for Single-Unit Approval

This final rule implements the proposed rule's 0-to-20 percent range

[1] See Fannie Mae Selling Guide, B4–2.2–02: Full Review Process (6/5/2018) on investment properties' 50 percent requirement. This is available at *https://www.fanniemae.com/content/guide/selling/b4/2.2/02.html.* A similar requirement for investment property—that at least 50 percent of the total number of units in the condominium project must have been conveyed to purchasers who occupy their units as a primary residence or second home—is at chapter 5701.5(c)(2) in the Freddie Mac Single-Family Seller/Servicer guide. This is available at *http://www.freddiemac.com/singlefamily/pdf/guide.pdf* (visited 3/18/2019).

[2] *Real Trends: The Future of Real Estate in the United States* by Urban Economics Lab and MIT's Center for Real Estate (October 2017). The study is available at *https://mitcre.mit.edu/wp-content/uploads/2017/10/REAL-TRENDS-MIT.pdf* (visited 3/18/20190).

[3] Id. at 19 (''Around the globe, 'live, work, play' has become a fashionable mantra for urbanism and real estate development. This trend has spurred the rescue and redevelopment of historical neighborhoods. It also has yielded new and denser mixed-use developments . . . . The resurgent prominence of quality urbanism in the United States is here to stay and will keep on energizing a segment of the industry.'').

[4] Fannie Mae Selling Guide B4–2.1–03: Ineligible Projects (6/5/2018). This is available at *https://www.fanniemae.com/content/guide/selling/b4/2.1/03.html.*

[5] *PWC and Urban Land Institute, Emerging Trends in Real Estate®: United States and Canada 2019* at 83 (''There also is a trend toward redeveloping urban malls by intensifying sites with mixed-use properties that combine retail with high-density residential, restaurants, community services, green space, and experiential attractions. . . .''), available at *https://www.pwc.com/us/en/industries/asset-wealth-management/real-estate/emerging-trends-in-real-estate.html* (visited 3/18/2019).

with the addition of an allowance for a de minimis number of units in projects with less than 10 units. Section 203.43b(h) has been reorganized in this final rule and redesignated as § 203.43b(i). The lower limit of 0 percent is set as a risk control measure if, for example, evidence shows that SUA loans show a significantly worse performance when compared to similar loans in approved projects. Most projects do not have a significant proportion of FHA-insured units. Under a 20 percent cap, 90 percent of current approved projects could have employed a single-unit loan approval. Under a much more restrictive 10 percent ceiling, 73 percent of current projects could have avoided the project-approval process through single-unit loans. Thus, the 20 percent limit would allow HUD great flexibility to allow single-unit loans in unapproved projects. This would enable smaller condominium projects, for whom applying for project approval might be too costly, to have similar access to FHA mortgage insurance as currently approved projects.

In setting or changing the maximum FHA concentration for single-unit approval, data points that HUD will consider will generally include:

- Analysis of SUA loan performance compared to the performance of loans made in approved condo projects.
- Analysis of SUA loans across geographical areas and further segmentation by average owner occupancy ratios and financial stability.

HUD may consider other factors as well.

H. Phasing, Contiguous/Adjoining Requirement

Proposed in § 203.43b(d)(6)(x)(B) was a requirement that in a detached or semi-detached development, all homes in a phase must be adjoining or contiguous. A number of public comments pointed out problems with this requirement, and this requirement is removed in this final rule. The requirements that all homes in a phase be separately sustainable, built out, and ready for occupancy remain. This material has been reorganized and is in § 203.43b(e) of this final rule.

I. Site Condominiums

This final rule revises the definition of Site Condominium in § 203.43b(a) to include projects consisting of single family detached dwellings that do not have shared garages or any other attached buildings, as well as single family detached or townhouse-style horizontally attached dwellings where the unit consist of both dwelling and land. The rule also removes the requirement in proposed § 203.43b(i) that all common assessments collected would have to be used solely for amenities outside the footprint of the individual site; however, the requirement that insurance and maintenance costs of the individual units must be the sole responsibility of the unit owner remains (see § 203.43b(j) of this final rule). When combined with the revised definition of Site Condominium, the requirements under this rule better accommodates the Site Condominium arrangements that exist in the market. Because manufactured home condominiums are processed under the HUD review and approval process, the final rule definition clarifies that Site Condominiums do not include manufactured homes.

J. Rehabilitation Loans

This final rule removes the exclusion of condominiums, other than Site Condominiums, from the 100 percent of the after-improvement value of the unit loan amount restriction (24 CFR 203.50(f)(3)).

K. Home Equity Conversion Mortgages (HECMs)

This final rule makes technical and clarifying changes to part 206 to avoid potential confusion as to the insurability of HECM condominium loans.

IV. Public Comments and Responses

This proposed rule was published in the **Federal Register** on September 28, 2016 (81 FR 66565), and the public comment period closed on November 28, 2016. HUD received 91 comments by the close of the public comment period. Commenters included individuals, mortgage companies, banks, trade associations, realtors, and mortgage brokers. The following is a summary of the significant issues raised in the public comments.

In addition to the specific issues noted, some commenters expressed general support for the rule, citing the increased flexibility and opportunities for homeownership.

General

Comment: HUD's rules are too restrictive and should be loosened to allow projects to participate and buyers to have more access to affordable housing. Condominiums are currently the strongest and least risky part of FHA's portfolio, yet FHA has significantly reduced condo approvals since 2009, and provisions in this rule will further decrease the FHA's share of the market. Making FHA insurance for condominium mortgages more widely available will help first-time homebuyers, including millennials, as well as seniors and low-to-moderate income buyers. Condominium mortgages perform better than other single-family mortgages, so increasing their availability will benefit the housing market and the FHA insurance fund.

HUD Response: HUD recognizes that mortgages secured by condominiums currently perform better than non-condominium secured mortgages, while noting that prior to FHA's approval process in 2009, the opposite was true. In order to achieve the appropriate balance between meeting the housing needs of the borrowers FHA's mortgage insurance programs were created to serve and to minimize the level of risk undertaken relative to the insurance, this rule provides additional flexibility and a basic framework for condominium project approval. HUD plans to issue additional guidance, with elements that can be changed as the market changes. HUD believes this approach will alleviate this concern and allow HUD to achieve the right balance as market conditions may change.

Comment: Many economic analyses are showing a shortage of multifamily housing in location-efficient areas and an oversupply of detached single-family houses. The closer we get to single-family and multifamily projects having the same approval requirements, the more efficient our housing market will be, the more we will get out of our developed land, the more we will conserve our pristine land, the more choices we can provide for people who may not necessarily want to use a car for every errand, and the more energy-efficient our cities will be. This proposed rule is a good first step, and it should be revised to go even further towards normalizing the lending rules.

HUD Response: HUD believes this rule strikes the correct balance between providing flexibility while protecting the Mutual Mortgage Insurance Fund and recognizing the difference in ownership of single-family dwellings that are maintained solely by the owners versus condominium ownership that includes maintenance by owners and associations.

Comment: Due to the significance of the changes, there should be a 12-month implementation period.

HUD Response: This final rule provides for a 60-day implementation timeframe that allows stakeholders to view additional guidance provided in HUD handbooks prior to implementation.

Comment: Commenter states that condominiums are currently the

strongest and least risky part of FHA's portfolio, yet FHA has significantly reduced condo approvals since 2009. This commenter urges FHA to ease restrictions on condominiums in many areas.

Comment: Many families want to purchase their own home and want to purchase condos; however, many lenders are not able to support the purchase because the condo project is not FHA approved. It would be nice to see if FHA could allow more condo projects to be allowed to participate in the FHA Home Loan program. It would open doors to those that are not able to qualify under conventional home loan terms.

HUD Response: This final rule provides the framework to establish flexibility, with increases and decreases, in applying the rule's standards through policy. It also includes the ability to obtain Single-Unit approval as an opportunity to provide access to FHA's programs in unapproved condominium projects.

The Proposed Flexible Percentage Ranges for Owner Occupancy, Commercial/Nonresidential Space, and FHA Concentration

Comment: HUD states that setting a range would allow FHA to vary the specific percentage, at will, that it believes to be responsive to market changes. The commenter does not understand the purpose of the ranges as it is the specific percentage that will have a more direct impact on condominium project eligibility for FHA insurance. While HUD proposes to offer the public the opportunity to comment if it considers changes to the upper and lower limits of the range, it would not offer the same opportunity when resetting the specific percentage within the range. The public should also receive notice and an opportunity to comment if HUD is considering a change in the specific percentage within the range as the specific percentage will have a greater impact on buyers and sellers than a change in the range. Further, the commenter requests confirmation that the case-by-case exceptions to specific limits allowed under the Guide and subsequent Mortgagee Letters will remain in effect under the new regulations.

HUD Response: The purpose of the proposed rule was in part to give the public the opportunity to comment on the potential upper and lower limits of the ranges for owner occupancy, FHA concentration, and nonresidential/commercial space. Thus, the public has had a chance to comment on the range of possible choices. In order to correctly allocate risk, HUD may potentially have to implement choices within these ranges quickly. HUD believes that the comment process adopted in the proposed rule balances the need for public involvement in the rulemaking with the need for market flexibility. As to any future change HUD might make to percentages within the ranges, this preamble identifies the factors that HUD will consider at section III.G of this preamble. As to the availability of case-by-case exceptions, such exceptions are permitted under § 203.43b(g) of this final rule (unchanged from § 203.43b(f) of the proposed rule). In the case of exceptions to the commercial/nonresidential space percentage, as required by statute (12 U.S.C. 1709(y)(2)), exceptions can be granted under either DELRAP or HRAP processing at the option of the requester, and in determining whether to allow such an exception, factors relating to the economy for the locality in which the project is located or specific to the project, including the total number of family units in the project, shall be considered.

Comment: A commenter cites the example of Mortgagee Letter 2016–15, which will not have significant practical benefit for condominium associations. Opportunity for public comment could have prevented such an outcome, remedying limitations in this policy update.

Comment: A commenter generally approves of the flexibility but notes that too many changes that create a moving target will frustrate board members and community managers.

HUD Response: This final rule provides the framework to establish flexibility in applying the rule's standards through policy. HUD strongly believes that establishing the ranges in the regulation provides the flexibility it needs to effectively respond to market fluctuations while giving the public information about the limits of that flexibility. Enabling HUD to respond to market changes will benefit condominium communities.

Standards for Flexible Ranges

Comment: For the flexible ranges on commercial space percentage, FHA-insured percentage, and minimum level of owner-occupied units, HUD should broadly identify and provide more information on the factors it will consider and the criteria for recalculations when determining whether to increase or decrease the percentage limit. Knowing the factors HUD will consider when determining the percentage of allowable commercial space in a condominium project ahead of time will enable compliance and can assist homebuilders in designing condominium projects that will meet the needs of both commerce and consumers in general keeping with HUD's expectations. Also, HUD should provide additional clarity on the frequency of adjustments and the amount of notice that will be given prior to a change in the range.

HUD Response: For changes to the applicable owner-occupancy percentage and commercial/nonresidential space percentage, factors that HUD will consider will include a portfolio analysis of default and claim rates of loans with similar attributes across different bands of owner-occupancy and commercial/nonresidential space percentages; analysis of condominium loans across geographical areas segmented by average owner occupancy ratios or average commercial/nonresidential space percentages; and an analysis of trends of financial stability of condominium projects in relation to each of the factors. For changes to the maximum FHA concentration, the analysis would also include analyses of FHA market share, analyses of default and claim rates by bands of percentages, analysis of FHA concentration percentages segmented by geographic area, and analysis of the performance of FHA condominium and single-family non-condominium loans. For single-unit approvals, data would include an analysis of single-unit approval loan performance versus loans in approved condominium projects, and analysis of single-unit approval loans across geographic areas and segmented by average owner occupancy ratios and financial stability. HUD may also consider additional data. These data points are also discussed in Section III of this preamble.

Where a statistically significant deviation occurs over an extended period of time (typically enough time to identify a trend, which is often, but not always, in the 6-month to 1-year range), FHA would then consider making a change after factoring in the effects of any change in providing credit to borrowers that FHA programs were designed to serve and the impact to the MMI Fund. FHA would also look at the level of deviation to determine the level of any change. One aspect of analysis would be to compare default rates of the relevant factors across similar tier bands and make decisions based on those results so as to avoid excessive risk to the MMIF as compared to the overall market.

Owner Occupancy

Comment: While having too few owner-occupants can detract from the viability of a project, requiring too many can harm its marketability. The ratio based on primary, secondary, or investment property is still too high. This will not make it easier to get FHA approval.

Comment: HUD should increase the minimum owner-occupancy ratio from 25 percent to 35 percent and should allow condominiums with fully funded reserves pursuant to a current reserve study to qualify for the exemption. HUD should include Real Estate Owned (REO) units and owner-occupied units in the ratio. This aligns with Fannie Mae and Freddie Mac and protects FHA's ability to play a countercyclical role in times of economic distress. Commenter supports the minimum acceptable level of owner occupancy at 35 percent.

Comment: Data indicate that condo borrowers tend to have higher FICO scores than non-condo borrowers, and that since 2010 the default rate on condos has been lower than for non-condo loans. These facts support FHA allowing a lower percentage of owner-occupants. This commenter supports Mortgagee Letter 2016–15 allowing 35 percent and suggests that HUD should monitor the use of this threshold for existing condos to determine if more general application might be possible.

HUD Response: HUD's final rule provides the framework to establish flexibility in applying owner occupancy standards through policy guidance as market forces may dictate, as well as address if such ratios vary based upon the construction status of the condominium. This final rule sets the lower range at which the minimum owner-occupancy percentage could be set at 30 percent. This is the current minimum occupancy requirement for new construction projects, and the lowest limit that HUD believes would protect the MMIF from undue risk. This standard does not seem to be having a negative effect on HUD's portfolio. Issuing a final rule with standards more restrictive than the ones currently in place, without strong justification supported by data, will create disturbance in the market, further impact development, and restrict access to affordable housing. Further, HUD must be able to set a standard that will accommodate recently completed and ready for occupancy projects, at which point a typical condominium project will not likely have sold all units to home buyers, or even a majority of its units.

Comment: The proposed rule of a sliding owner occupancy rate of 25 percent to 75 percent would create additional work for the homeowners' association (HOA) and would be more harmful for condominium developments struggling to increase homeownership rates. One of the unfortunate effects of the 2008 housing crisis is the ''death spiral'' many condominium developments continue to struggle with. As mortgage delinquencies rose, so too did HOA fee delinquencies and foreclosures purchased by investors. This happened at the same time HUD tightened the FHA condo requirements. As homebuyers discovered more condo developments could no longer qualify for FHA financing, more investors bought the units to rent. This helped the Condominium Association financials, but the result was that more developments could not qualify under the 50 percent owner occupancy rule. Associations and homebuyers are looking to HUD and the FHA for clear and consistent rules, and only a flat 25 percent owner occupancy rate will provide this surety. The proposed sliding homeownership scale is anything but clear and consistent. Voluntary Associations will be less incentivized to seek FHA approval as this will cause more work for them to determine which percentage applies to them and if they qualify or not. Even worse, FHA requiring stronger financials to get a lower owner occupancy rate requirement only further depresses developments in communities that are still struggling to recover. This commenter vehemently disagrees with HUD's statement that the ''current standard of 50 percent has worked in the recent market.'' To the contrary, this standard has led to more condo units being sold to investors and pushing their developments farther from FHA qualification. The result is the reduced inventory for first-time homebuyers that has contributed to declining homeownership rates.

HUD Response: The proposed range is designed to not only address current market conditions, but also to give HUD flexibility to act quickly to revise the percentage minimum in the future if market data indicates that this is necessary. This final rule revises the lower end of the standard to 30 percent owner occupancy, the current standard for new construction. This gives HUD sufficient room to reduce the requirement if analysis of the data indicates that the current minimum is too high.

Comment: A proposed upper limit of 75 percent for a given project effectively would prevent homebuilders from completing projects, especially in areas of the country with high concentrations of investment properties and second homes. This would chill employment in construction and lead to negative economic consequences and a lack of choice for the consumer. Therefore, HUD should set the permissible percentage range between 25 percent and 50 percent.

Comment: 75 percent would be too high an owner occupancy requirement, which would be an extreme outlier and would needlessly restrict the ability of owners to lease units, potentially forcing owners to sell units at discount prices while further jeopardizing consumer access to mortgage credit. HUD should reduce the maximum from 75 percent to no more than 51 percent. Many associations amended their condominium documents to meet the FHA 50 percent requirement; raising the percentage above 50 percent would put them out of compliance and affect financing options. Amending the condominium documents is difficult and expensive. This would impact projects that already spent considerable funds meeting the earlier guideline. Dropping the percentage to 35 percent will not make a big impact given the additional criteria, as few projects will be approved for that rate. Seventy-five percent is excessive and could create project delays impacting costs that would be passed on to consumers.

HUD Response: The proposal regarding the range was designed to allow HUD to react quickly if future market conditions should warrant it. FHA will then establish the maximum limit within this range. Any proposed future changes to the range will have advance notice.

Changes to the acceptable limit within the proposed ranges will be driven primarily by performance data for the Mutual Mortgage Insurance Fund. Such analysis may include:

- FHA portfolio analysis of default and claim rates of loans with similar attributes across different bands of owner occupancy percentages.
- Analysis of FHA condominium loans across geographical areas segmented by average owner occupancy ratios (*e.g.,* average owner occupancy ratios in metropolitan areas versus rural areas).
- Analysis of trends of financial stability of condo projects in relation to owner occupancy (*e.g.,* relationship of default and claim rates when compared with percent of financial reserves and owner occupancy percentages). None of the requirements for owner occupancy maximum will require condominium

association to update or rewrite their legal documents.

Comment: The restrictions placed on approval for condominium projects with below 50 percent owner-occupancy levels are onerous and too restrictive. Pursuant to a recent Community Associations Institute study,[6] FHA's current requirement on reserves for projects with greater than 50 percent owner-occupancy was one of the leading reasons condominium projects were unable to obtain FHA certification. This requirement hurts the potential viability of condominium properties. If a building cannot be certified by FHA, it is more difficult for sellers of condominium units to find eligible borrowers. Often the seller's only alternative is to turn the unit into a rental, thus further lowering the owner-occupancy ratio.

HUD Response: The range provided in § 203.43b(d)(6)(ix) as it relates to owner-occupancy in a condominium project refers to a minimum requirement that HUD may establish within that range through notice. Historically, HUD has been the mortgage insurance provider for many first-time homebuyers and establishing a minimum owner-occupancy percentage protects the investment of new homeowners. In addition, HUD has a fiduciary responsibility to balance policy that promotes homeownership while protecting the Mutual Mortgage Insurance Fund. With this in mind, HUD's final rule provides the framework to establish flexibility in applying this standard through policy guidance as market forces may dictate. This final rule sets the allowable minimum percentage at 30 percent of the units. There may be times when a reduction in the owner-occupancy percentage is an appropriate action based on current market conditions and other contributing factors. HUD will consider the comments and recommendations when drafting the specific policy guidance on condominiums.

Owner-Occupancy Minimum of 50 Percent

Comment: HUD has provided no measurable rationale for the 50 percent requirement. In fact, both Freddie Mac and Fannie Mae have no such requirement when the property is being purchased as a primary residence. All FHA borrowers are purchasing a primary residence; their purchase will only help to boost the association's owner occupancy ratio. In this instance, an owner/occupancy requirement is counterproductive when a property meets all other certification requirements related to financial safety and soundness. FHA should remove the current owner-occupancy requirement and align with Fannie Mae and Freddie Mac policy by allowing lenders to review a condominium project in its entirety. Owner-occupancy levels, whether 100 percent or 0 percent, should be evaluated in conjunction with the project's reserves, delinquency rates, etc., to determine a condominium project's viability.

HUD Response: HUD disagrees with the recommendation. HUD insures mortgages for properties that are primarily owner-occupied and has a statutory fiduciary responsibility to balance policy that promotes homeownership while protecting the Mutual Mortgage Insurance Fund. Eliminating the owner-occupancy requirement in its entirety solely based on the strength of the borrower has proven to be an unsound and inoperable financial policy for FHA.

While Fannie Mae and Freddie Mac (Government Sponsored Enterprises or GSEs) do not impose owner occupancy restrictions for condominiums when the property being purchased is a primary residence, FHA serves a narrower band of borrowers that generally have credit profiles and equity positions below those that the GSEs permit. The final rule, however, provides the framework to establish flexibility in applying this standard through policy guidance as market forces may dictate.

Comment: The current 50 percent threshold has not been a significant barrier to approval, save for limited circumstances such as developer-controlled condos or condos located in vacation or resort areas. However, greater flexibility would be welcome in this area. Lowering the current threshold below 50 percent would have a detrimental effect on approvals. The proposed regulation does not specify conditions in which FHA would consider raising the occupancy threshold from 50 percent to a higher range. Setting the occupancy below 50 percent would be detrimental to the commenter's clients. This comment supports a flexible range in the 50 percent to 75 percent range. Allowing a 50 percent owner/renter ratio is a valid, and sound practice. If it is too difficult for people to rent their condominium when life changes (*i.e.,* death, divorce, job relocation, new baby, etc.), the property values become depressed, which is bad news for borrowers and FHA.

HUD Response: HUD's final rule provides the framework to establish flexibility in applying owner occupancy standards through policy guidance as market forces may dictate. To preserve flexibility and potentially accommodate recently completed projects, this final rule allows the possibility of a 30 percent owner-occupant minimum. HUD will consider the recommendations when updating future policy guidance.

Owner-Occupancy Minimum Below 50 Percent

Comment: 25 percent should be the owner occupancy percentage. Even lowering owner occupancy from 50 percent to 25 percent, there is still a Board of Directors of the owners that will be empowered with running the Association to the best of their ability. There is no risk to the FHA in making loans to borrowers in these condominium projects. The purchasers of these units, if they use FHA financing to purchase, will be owner occupants.

Comment: To stabilize the financial viability and increase purchase options for FHA borrowers, two comments support a minimum level of owner-occupancy range between 25 and 50 percent, while certain exceptions could be made for lower percentages, or for extending the range to 75 percent, as proposed by HUD based on criteria dictated in ML 2016–15.

HUD Response: The final rule establishes the owner occupancy range that provides the framework to establish flexibility in applying this standard through policy guidance as market forces may dictate. The comments and recommendations will be considered when updating and drafting the specific guidance for owner occupancy.

Owner-Occupancy Requirement in Strong Rental Housing Market Areas

Comment: HUD should eliminate ownership restrictions and occupancy requirements in an area in which rental housing is in strong demand. It makes no sense to penalize property owners who have tremendous value in their properties (as determined by strong rents and low vacancies) by not letting them sell them or finance them. In such areas, a rental property is worth a lot because there are so many prospective tenants and the rules for owner-occupancy do not work. Such properties may not be able to be sold because their value is too high to allow third parties to obtain financing.

Comment: To reduce barriers to obtaining a reverse mortgage, make the owner-occupant requirement extremely low or non-existent (commenter states

[6] Community Associations Institute, ''Survey: Federal Housing Administration (FHA) Condominium Project Approval,'' November 2016.

they are in an area where rentals are highly desired, and it will be impossible to meet HUD's owner-occupancy requirement for the building).

HUD Response: HUD disagrees with the recommendation to eliminate owner-occupancy requirements. HUD insures mortgages for properties that are primarily owner-occupied and has a fiduciary responsibility to balance policy that promotes homeownership while protecting the Mutual Mortgage Insurance Fund. Eliminating the owner-occupancy requirement in its entirety solely based on the strength of the rental market in an area has been proven to be an unsound financial policy in the marketplace with respect to both forward and reverse mortgages. The final rule, however, provides the framework to establish flexibility in applying this standard through policy guidance as market forces may dictate.

HOTMA and Owner Occupancy

Comment: HUD should decrease allowable owner-occupancy limits from 50 percent to 35 percent without need for additional documentation as directed by Congress under the Housing Opportunities Through Modernization Act (HOTMA).

HUD Response: HOTMA directed HUD to ''issue guidance regarding the percentage of units that must be occupied by the owners'' by October 27, 2016, or the 35 percent requirement to which the comment refers would have become effective. HUD issued Mortgagee Letter 2016–15 prior to the statutory deadline. That mortgagee letter is outside the scope of this rulemaking, which provides for a percentage of owner occupancy as low as 30 percent.

However, HUD will consider this comment as well as then-current market conditions in future adjustments to the percentage within the range of 30 percent to 75 percent allowed by this final rule.

Secondary Residences

Comment: In prior years, HUD allowed secondary residences to count as owner occupied. With issuance of ML 2009–46B and 2011–22, HUD allowed a second home to count as owner occupied only if it was a secondary residence with an FHA loan under 24 CFR 203.18(f)(2). A commenter states that 24 CFR 203.18(f)(2)(iii) relates only to the maximum FHA loan amount (24 CFR 203.18 ''Maximum Mortgage Amounts'') for a ''second FHA loan'' in the sole event that an owner with an existing FHA loan faces ''undue hardship'' and needs to obtain a second FHA loan on another unit in certain circumstances.

Comment: HUD's reference to the definitions of principal and secondary homes in 24 CFR 203.18(f)(1) and (2) carries an implication that the secondary residence must have an FHA loan on it in order to be counted in the owner-occupancy ratio. It does not mean that a unit with a conventional second loan (or even a unit that is mortgage free), either of which are secondary residences, should not be counted as owner occupied. In the recent past, HUD again reversed its decision and now allows secondary residences to count as owner occupied (as does Fannie Mae). Because of its reference to 24 CFR 203.18(f)(2), it is unclear as to what the Proposed Rule's intent is. Please state unequivocally and unambiguously that secondary residences count as owner-occupied, and/or that all residences which are not investor-owned or vacation homes count as owner-occupied, and/or also please state separately the definitions cited in §§ 203.18(f) (1) and (2) and omit (f)(2)(iii).

Comment: 24 CFR 203.18(f)(2)(iii) relates only to the maximum FHA loan amount (24 CFR 203.18 ''Maximum Mortgage Amounts'') for a ''second FHA loan'' in the sole event that an owner with an existing FHA loan faces ''undue hardship'' and needs to obtain a second FHA loan on another unit in certain circumstances.

HUD should establish a revised owner-occupancy calculation based on the number of the minimum allowable investment units rather than based on a subdivision of classifications for owner-occupied units, investor units, vacation homes, etc. This revised grouping would make it easier for lenders to distinguish and track the number of primary, secondary, and investor held units. Currently, lenders face significant challenges in distinguishing secondary residences from vacation homes and investor-owned units, and struggle to accurately validate and monitor these units in approved projects. By classifying units as (1) primary residences; (2) secondary residences; or (3) investor units, in line with GSE industry standards and removing the need to distinguish vacation homes from secondary residences, which most associations are not equipped to track, lenders will be able to more accurately track owner-occupancy levels and FHA will be able to better manage default risk in approved projects.

HUD Response: HUD recognizes the concern with the reference to Secondary Residences, which term is unique to FHA insured mortgages. FHA had previously addressed this issue in Mortgagee Letter 2015–17 (ML 15–17), whereby FHA indicated it would consider a property as owner occupied provided it was not ''Investor Owned'' for the purpose of calculating owner occupancy ratios for Condominium Project approval. However, in accordance with the Housing Opportunity Through Modernization Act (HOTMA), which was signed into law on July 29, 2016, the National Housing Act was amended to require HUD to use properties which were either principal residences or Secondary Residences ''as such terms are defined by'' HUD (or sold to owners who intend to meet such occupancy requirements) to establish HUD's owner occupancy requirements. As required by HOTMA, Mortgagee Letter 2016–15 replaced the requirements in ML 15–17 with the current percentage standard. Currently, HUD's definition of ''Secondary Residence'' is found in 24 CFR 203.18(f), and, as noted in the comments, has three elements: It is (1) part-time abode where the mortgagor typically spends less than a majority of the calendar year; (2) not a vacation home; and (3) the Commissioner has determined it eligible for insurance to avoid undue hardship to the mortgagor. These standards, particularly (3), are addressed to eligibility for mortgage insurance in accordance with Section 203(g) of the National Housing Act. This rule relates to the approval of the project to participate in the mortgage insurance program; specifically, the issue of Secondary Residences comes up with respect to the owner-occupancy percentage. In the context of project approval, as comments noted, (3) does not make sense; it is an assessment that will be made if the mortgage on the unit is submitted for insurance after the project is approved to participate. Additionally, HUD recognizes the exclusion of vacation homes, while necessary for the definition found in 24 CFR 203.18(f)(2) to conform with the requirement in section 203(g)(1) of the National Housing Act, 12 U.S.C. 1709(g)(1), is not necessary to calculate owner occupancy rates of condominium projects for project approval purposes. For this reason, this rule states that for project approval, any unit in which the owner resides as his or her place of abode for any portion of a calendar year other than as a principal residence, and that is not rented for a majority of the calendar year, counts towards the owner-occupied percentage. Individual mortgages on units in approved projects would still have to meet HUD's rules, regulations, and underwriting requirements, as applicable, to obtain insurance on their mortgages.

Percentage Ranges for Commercial/Nonresidential Space

Commenters Stated That HUD Should Not Impose a Limit on the Percentage of Commercial/Nonresidential Space

Comment: The economically optimal mix of residential and commercial will differ both by the project and by the community. Any such restriction on uses can only reduce the economic value of projects; it can never enhance it. For the purposes of underwriting, any limit on the mix of uses in a mixed-use project is counterproductive and should be eliminated from the proposed rule. Second, from a public health perspective, there is a need for more mixed-use projects in our towns, cities, and suburbs. Mixed-use developments greatly enhance the walkability of neighborhoods, which in turn promotes health and well-being through more frequent social interactions, more walking, and reduced crime. It should not be the role of HUD to place limits on mixed-use projects via rulemaking.

Comment: Mixed-use commercial/residential spaces are the cornerstone of traditional small-town America. Preserving the 'residential characteristics' of a condominium is done at the expense of creating a walkable neighborhood. People should be able to apply for help to build or renovate residences even if those residences are part of a building that is more than 50 percent commercial. Rather than protecting the ''residential character'' of condominium projects, the focus should be on underwriting standards that are more directly related to creditworthiness of the individual. Federal regulations must support mixed-use rental housing for affordability and walkability.

Comment: Commercial space would not harm the project's financial viability. Many of the nation's most successful and in-demand mixed-use neighborhoods are comprised of such projects. Increased HUD flexibility regarding the amount of commercial space in multi-family buildings would help to grow and expand mixed-use development efforts, specifically in areas targeted for redevelopment. Furthermore, HUD should review its criteria for all its programs so that they better reflect growing demand for walkable, mixed-use communities; conform to the overall goals for mixed-use, sustainable communities outlined in the Administration's Sustainable Communities Initiative; and bolster rather than stymie local government efforts to preserve and grow the stock of affordable housing in neighborhoods that include mixed-use buildings.

HUD Response: HUD agrees that mixed-use developments that combine commercial enterprises with residential housing are increasing in popularity.[7] HUD notes that Fannie Mae recently increased its allowable commercial space percentage to 35 percent.[8] With a strong demand for residential units in mixed-use projects within and outside urban settings, the percent of commercial/nonresidential space becomes less concerning if there is no other negative impact on the residential character and financial stability of the project.

This final rule provides a sufficient range to allow adjustments that may be necessary for the foreseeable future. HUD disagrees with the suggestion that HUD should not impose any upper limit on the percentage of commercial/non-residential space an acceptable project may have. HUD insures mortgages for properties that are primarily residential in nature and has a fiduciary responsibility to balance policy that promotes homeownership while protecting the Mutual Mortgage Insurance Fund.

Alternative Suggestions as to the Amount of Commercial Space That Should Be Approvable

Comment: Commenters support the expansion of allowable commercial space to the proposed range of 25 percent to 60 percent. This range, when combined with a look at local economic factors, would allow more associations to qualify for FHA approval without necessarily increasing risk. More and more jurisdictions are fostering walkable, transit-oriented communities that offer a blend of commercial and residential space. This change would align FHA with emerging market preferences. A commenter notes an example of a mixed-use development that is highly vibrant and desirable, but would not be approved by FHA because the commercial space exceeds 30 percent.

Comment: The maximum standard for commercial space should be set and maintained at 60 percent of the total floor area in § 203.43b(d)(6)(vii). Many highly successful mixed-use neighborhoods are comprised of a similar commercial space to residential space ratio, and there is a real demand nationwide for development of such projects. If financing were made more readily available, it would have nothing but a positive impact on communities across the nation. This commenter stated disagreement with HUD's assessment of potential negative impacts on the residential character of mixed-use developments with greater than 50 percent of total area designated for commercial space.

Comment: The rule should maintain the current commercial/nonresidential space requirements, which are consistent with National Association of Builders policy that calls for the allowable percentage of nonresidential space up to 45 percent. Setting a limit too high could impact the residential character of a project and expose FHA-insured units to risk should a commercial tenant leave the project. Mortgagee Letter 2012–18 provides flexibility and HUD should maintain these requirements.

Comment: The commercial space requirement should be set between 25–50 percent, with specific guidelines to allow exceptions for projects with up to 60 percent commercial space. Special consideration is needed when a project seeks to use more than 50 percent of a property's total floor area for commercial space due to the potential impacts of this expanded presence on the characteristics of a residential project.

Comment: Mixed-use neighborhoods are preferred, and 56 percent of millennials and 46 percent of baby boomers prefer to live in areas with a mix of retail and housing options (Regional Plan Associations, ''The Unintended Consequences of Housing Finance,'' February 2016). Mixed-use neighborhoods have held up their value better in the years following the Great Recession compared to solely residential neighborhoods. Given FHA's mission to promote safe and affordable housing, the current policy limiting commercial space hinders efforts to build neighborhoods that have a mix of residential housing and businesses with access to public transit that HUD has championed. FHA should allow up to 45 percent commercial space without documentation. Greater levels of commercial space should be evaluated holistically along with the strength of the project, but should not be capped at a specific percentage.

Comment: To expand the pool of eligible projects, HUD should set the minimum range for commercial/non-residential space without requiring an exception from the current 25 percent to 35 percent. Projects with commercial space of more than 35 percent but less

[7] *Real Trends: The Future of Real Estate in the United States* by Urban Economics Lab and MIT's Center for Real Estate (October 2017), at 19. The study is available at *https://mitcre.mit.edu/wp-content/uploads/2017/10/REAL-TRENDS-MIT.pdf.*

[8] Fannie Mae Selling Guide B4–2.1–03: Ineligible Projects (6/5/2018), available at *https://www.fanniemae.com/content/guide/selling/b4/2.1/03.html.*

than 50 percent may request exemptions pursuant to FHA criteria subject to proposed §§ 203.43(f)(1) and (2).

Comment: Increasing the percentage of permissible commercial/nonresidential space prior to triggering an exception request builds on FHA's experience with the exception structure currently enforced in the Guide that permits the jurisdictional Homeownership Centers (HOCs) to consider and approve exemptions for projects with commercial space that exceeds 25 percent but is less than 35 percent of total floor area. Protecting a project's residential use and character is not exclusive of consumers who view access to a broad array of services within a project as a fundamental component of the project's residential use and character. Many consumers place a high value on immediate access to services. For these consumers, commercial space is a meaningful component of enhancing the residential experience and a motivation to purchase.

Comment: An upper limit of 50 percent should be set for the range regarding commercial space. A higher percentage threatens the residential nature of a project and too closely ties the residential viability to the project's commercial success. HUD should continue to use the standard of 25 percent while exercising the ability to increase that threshold for certain markets or projects as proposed in the regulation.

Comment: It is possible for a project with commercial space exceeding 50 percent of total floor area to be successful in certain housing markets. Any exceptions granted above the 50 percent limitation must appropriately mitigate potential exposure to business cycle risk. At this time, it may not be appropriate for FHA to approve condominiums in the upper limit of the proposed 60 percent commercial space range—the agency lacks data and experience concerning the sustainability of such projects. This is not the case for projects with 35 percent or less commercial space.

Comment: Older business/residential buildings help entrepreneurs live upstairs from their businesses. HUD should lift the minimizing constraints of space versus funding. HUD should consider doing a survey on said remodeling of old tenements/downstairs businesses. All old buildings need new life for sustainable development.

Comment: Research shows that consumers increasingly place a price premium on housing that is near (walking distance of less than .25 miles) of services, including retail, healthcare, and transportation. This research has also shown a correlation between a homeowner's access to transportation, employers, and household economic growth. Condominium projects with commercial components not only meet consumer demand for access to services, but also may improve access to jobs leading to greater financial stability for households and the community at-large.[9]

HUD Response: This final rule narrows the upper end of the potential allowable commercial space percentage to 55 percent of the total floor area. This percentage acknowledges the future potential of mixed-use developments while avoiding risk to the MMIF. The range gives HUD flexibility to adjust the standards through policy changes as the market conditions dictate.

HUD believes in allowing the development of pedestrian oriented communities that offer the convenience of commercial and residential space in the same project, so long as the residential character is not negatively impacted. Multiple commenters seem to agree with HUD's assessment, noting that although they also agree with the expanded range of allowable commercial/non-residential space, special consideration is warranted when a project seeks to use more than 50 percent of a property's total floor area for commercial/non-residential use. HUD will consider the recommendations submitted through the comments when drafting specific policy guidance on this subject.

Comment: The HOTMA provision allowing lenders to make exceptions to the commercial space requirement based on ''factors relating to the economy for the locality in which such project is located'' should be immediately implemented (the deadline was October 28, 2016).

HUD Response: This provision was proposed on September 28, 2016 (81 FR 66565) and is made final by this rule (§ 203.43b(g)(2)).

Comment: Most of the newer condominium projects that have been built in the past 5 years in one area include street level commercial space. To disqualify the ability of a purchaser to purchase a condominium in this building using FHA financing due to current commercial space vacancy (assuming this is a temporary short-term vacancy) does not make sense. HUD should set this minimum occupancy rate of commercial space at 25 percent.

HUD Response: The rule establishes the range for commercial space, but does not impose a restriction on commercial space vacancy. As to the percentage, please see the prior response.

Comment: HUD should clarify that this requirement is not a minimum, but an allowable maximum for the addition of commercial space as well as the frequency with which FHA will reexamine the commercial space requirement, how much notice will be provided to lenders when a change is made, and what criteria will be used to determine recalculations. Finally, FHA should further define the items that may contribute to commercial space to ensure that lenders understand what features will fall into this category to aid in the completion of accurate commercial space calculations.

HUD Response: The range provided in § 203.43b(d)(6)(vii) as it relates to the commercial/non-residential space in a condominium project refers to an allowable maximum, not a minimum requirement. Regarding the commenter's request for additional information on guidelines, procedures, and items that contribute to commercial space, HUD expects to issue future guidance on such issues. Section III of this preamble discusses data that HUD will consider when determining a change in the percentage of commercial/nonresidential floor area.

Single-Unit Approval and Reserve Requirements

Comment: Single-unit approvals offer millennials an opportunity to own homes, and the elderly to stay independent, especially if the reserve requirement could be set lower than that of Fannie Mae, perhaps 10 percent of the overall budget instead of 10 percent per annum. If the project is budgeting properly, it always has the appropriate amount to cover its expenses already on hand and it doesn't make sense to put in an additional 10 percent each year.

Comment: HUD should consider an exemption from the reserve requirement for single-unit loans where a project has been well-managed for decades, while approaching the capital funding issue via special assessments. HUD could use appraisers to speak to the historical values of units within the complex. If one could determine that the price variance is too high to meet a certain standard, then the exemption is not granted.

[9] Richardson, Nela, Urban Institute/Core Logic: *Demand, Data, and Demographics Symposium, Integrated Services and Inclusionary Housing for Changing Demographics: Can we build our way out of this?* (Washington DC, November 2, 2016). Data deck available for download at: *http://www.urban.org/events/data-demand-and-demographics-symposium-housing-finance-2* (accessed 3/18/2019).

HUD Response: This rule does not impose a minimum reserve requirement for single-unit approval, but establishes a framework for single-unit approval that utilizes the eligibility requirements in 24 CFR 203.43b(d) as a baseline, which includes requirements for reserves; or a subset of these requirements. HUD will consider these comments when addressing single-unit approvals in future notices.

FHA Concentration Percentage

Comment: HUD, through FHA has a responsibility as a steward of the program to mitigate risk. Without further clarification as to existing risk or the rationale for potentially reducing or expanding the concentration limits, it is difficult to provide substantive comment. However, HUD is a critical source of funding for buyers in condominiums, and HUD should not lower the concentration threshold from its current 50 percent level without adequate data to support such a contraction in the program. Existing levels should be preserved with greater flexibility for increased concentration where appropriate. If HUD determines that changes are warranted, HUD should provide additional information about the factors that will be considered.

Comment: 25 percent FHA insured would be too low. HUD should not be overly concerned about FHA concentration in projects that are well-managed and meet all FHA approval criteria. Some limitation is prudent risk management. HUD should retain a 50 percent minimum FHA concentration limit.

HUD should maintain its current guidelines to allow for 50 percent of the total number of units in a project with some leniency to allow for potential cancellations. In many circumstances, HUD has already allowed for up to 75 percent FHA financed units in established projects based on individual project conditions and the associated risks of this flexibility are monitored and mitigated through the recertification process. The maximum percentage should be raised to 75 percent. The flexibility provided under current guidelines along with the sufficient risk mitigation provided through the recertification process remains the most effective approach to this calculation for both lenders and FHA.

HUD Response: This final rule implements the FHA concentration range that provides the framework to establish flexibility in applying this standard through policy guidance as market forces may dictate. HUD will evaluate these recommendations when updating policy guidance and will consider pertinent data to support any future changes to the concentration limit.

Comment: A commenter recommends that HUD allow an FHA concentration up to 100 percent, especially for new construction. In most metropolitan areas, the cost of a condominium is significantly less than a traditional single-family home. FHA is often the only financing available for many buyers, especially first-time or middle-income homebuyers who have limited resources for a down-payment. Research shows that the time needed to save for an FHA related down payment is significantly higher for a single-family home compared to a condominium. Purchasing a condominium will allow many FHA borrowers faster access to homeownership, helping to build their wealth and stabilize their living situation sooner rather than later. A high concentration of FHA borrowers means a high concentration of owner-occupants, which helps the financial soundness of the condominium project. FHA does not limit the amount of financing available within a neighborhood of single-family structures, nor should FHA limit financing within a condominium project. Generally, FHA condominium buyers have a stronger financial footing than non-condominium buyers. FHA condominium buyers tend to have higher FICO scores than the non-condominium buyers and higher monthly incomes. In 2016, the average monthly income for a condominium buyer was $1,693, versus $1,397 for non-condominium buyers.[10] These are creditworthy borrowers who deserve to live in buildings and communities that meet their needs.

HUD Response: HUD disagrees with the recommendation to increase the maximum allowable FHA concentration percentage to 100 percent. HUD has a fiduciary responsibility to balance policy guidance with risk to the Mutual Mortgage Insurance Fund. Allowing for a higher FHA concentration percentage without careful consideration for additional requirements or justification may increase the Government's risk.

Single-Unit Approval

Single-Unit Approval Generally

Comment: Single-unit approvals should be allowed in buildings that do not meet current requirements, for example, if the owner-occupant percentage is too low, single-unit approvals could provide a way for the development to build up to the required percentage.

With only 9,866 condominium projects currently on FHA's approved list (of 150,000 nationwide), access to condominium units with FHA-insured mortgages is limited. Allowing single-unit approvals could greatly improve access and ''change the trajectory of the FHA condominium approval trend line'' to the benefit of condominium associations and consumers.

Comment: Most developments fail to keep their FHA approval because it is not in their budget and most do not have the knowledge and expertise to keep the project approved. By eliminating this process, developers would be able to serve more borrowers that are looking to use FHA financing to accomplish their goal of homeownership.

HUD Response: Single-unit approvals, in the appropriate circumstances, can be beneficial, and are retained in this final rule as an opportunity to provide access to FHA's programs in this or similar situations. The rule establishes requirements to mitigate risk to the Mutual Mortgage Insurance Fund, while providing that these can be varied in the future as needed.

Comment: Because of the reluctance of condominium associations to become HUD-approved, single-unit approval is imperative. HUD should reconsider requiring any complex that shows up on HUD's approval list to go through project approval. That will require many of these associations to be approached a second time when many of them had a bad first experience.

HUD Response: HUD has a fiduciary responsibility to the Mutual Mortgage Insurance Fund that generally precludes allowing single-unit loans on any project, although the rule provides a framework for HUD to vary single-unit approval requirements as needed to meet market needs.

Comment: To make single-unit approval as successful as it could be, HUD should do away with ''loophole letters,'' because the property manager can refuse to provide one and kill the loans that would otherwise happen.

HUD Response: The comment seems to be referring to a questionnaire that is sent to the Association. HUD appreciates that obtaining information from Condominium Associations can complicate the mortgage process, but recognizes that such information may not be obtainable through other methods. While this rule does not mandate that any specific questionnaire

[10] Urban Institute, ''Loosening FHA Restrictions on Condominium Financing Makes Sense,'' November 2016, available at *https://www.urban.org/sites/default/files/publication/85936/loosening-fha-restrictions-on-condominium-financing-makes-sense.pdf.*

be completed by a Condominium Association, this rule provides the framework to establish flexibility in applying the proposed standards through future policy guidance as market forces may dictate.

Comment: The current approval process has incentivized condominium boards to undertake an examination of the Association finances, state of insurance policies, collections, and other factors that are needed to obtain approval. This has been beneficial to communities who have undertaken this process. Providing an approval process with a lower approval threshold will short circuit the larger project approval process as boards will forego the time and effort of project approval knowing there is a lower barrier for approval elsewhere. This would be unfair to the communities which have undertaken project approval and provide a dueling set of standards.

HUD Response: Providing for a limited number of single-unit approvals, based on standards appropriate to mitigate against excessive risk, should not affect the fairness of the overall project approval process. Limiting the number of such approvals in projects provides incentive for Associations to continue to pursue the project approval process in projects that typically have a larger percentage of FHA financing. The increased flexibility to meet market needs and enlarged approval period provided by this rule is expected to increase the number of eligible mortgages in Condominium projects.

The lower end of the range, including a 0 percent maximum, is available if overly negative effects occur. However, smaller condominium projects may simply not have the financial ability or expertise to apply for project approval, and a limited number of Single-Unit Approvals would give them a path forward to provide FHA mortgage-insured housing units. Project approvals will have benefits, including a degree of certainty that units will be eligible for mortgage insurance; therefore HUD believes those projects with the ability to do so will continue to seek project approval.

Comment: The previous spot loan program led to concerns of abuse. This program should have diligent monitoring and adequate system enhancements to prevent abuses. Without further guidance and clarity regarding lender obligations, the criteria that will be used for unit approval verification, and the processes that will be in place to monitor and track these unit approvals, this program may result in unintended risk to the Mutual Mortgage Insurance Fund, and to borrowers seeking sustainable homeownership. FHA should implement a limited review process for single-unit approvals and a screen within FHA Connection to collect data for FHA on spot approvals to help FHA monitor and manage these risks. Based on the current proposal, a condominium identification number would not be available for a single unit, and without effective monitoring systems, both FHA and participating lenders will have significant difficulties determining approved unit percentages in an ineligible building. There should be a way for the public to track percentages of single-unit approvals. HUD should clarify the tracking mechanism to be used to determine compliance with the 0–20 percent range allowed.

HUD Response: HUD agrees that a reliable tracking mechanism is needed to determine compliance with the range allowed. As a result, HUD has added a provision that ''HUD may suspend the issuance of new FHA case numbers for a mortgage on a property located in any project where the number of FHA-insured mortgages exceeds the maximum,'' which will allow FHA to proactively manage the concentration range. The maximum percentages that apply will be established by notice. Also, the 0 percent possibility provides a safety valve. This final rule provides specific criteria for single-unit approval that HUD believes will adequately protect the Mutual Mortgage Insurance Fund, while providing needed flexibility for HUD to make changes in the future as needed.

Comment: Single-unit approval should not undermine the project approval process and should be limited. While the FHA and industry have struggled with encouraging boards to undertake project approval, the importance and benefits of approval have become more widely understood over the past few years. Adopting a shortcut will undermine the process unless more clearly delineated limitations are adopted. If the criteria for single-unit approvals is extremely loose, HUD will lose control of the process and lenders will turn to single-unit approval as the industry standard.

A comment proposed that single-unit approval would be acceptable if:

(1) The association had held FHA approval which has been expired for fewer than 3 years.

(2) The FHA approval was not withdrawn or rejected for failure to meet FHA criteria.

(3) Other criteria FHA deems appropriate.

Another comment stated that there should be some leeway and suggests that the following common issues should be considered to determine what is required for single-unit approval:

- Construction Defect Litigation or repairs in response to defect litigation are still in process.
- Owner Occupancy is between 35 percent–50 percent.
- Leasing Restrictions that include: Seasoning Clauses, Tenant-Screening, short-term Rentals.
- Co-Insurance is used without 100 percent replacement cost, but replacement cost can be validated using Marshall-Swift or other acceptable means.
- Bylaws are not signed.
- Status with the Secretary of State is not current.
- Condominium Documents were not created and or filed properly at the time of development.
- Transfer fees are in place.

HUD Response: HUD has considered these suggestions and believes that the limitations stated in this final rule are appropriate. Single units, to be approved for mortgage insurance, must not be either in a project that is already approved, or a project that has been determined to have significant issues that affect the viability of the project. The unit must meet the general standards for approval stated in the rule, or some subset of these standards, or less stringent standards, determined by HUD. The unit must be in a completed project that has at least 5 dwelling units. HUD plans to issue further guidance under the framework provided in this rule.

Comment: HUD should define and clarify the documentation requirements for approvals under the exception for less stringent standards.

HUD Response: The less stringent standards will be determined based on experience and conditions at the time.

Comment: HUD should allow public comment on the specific criteria and processes FHA will use to manage single-unit approvals prior to implementation. The actual standards and process that FHA adopts are critical to the success of single-unit approvals. If a single-unit approval system is to be successful, all market participants (including lenders, condominium association boards, community managers, community management companies, and other professionals who support the community association housing model) must have the opportunity to review and comment on the procedures and standards to be used.

Comment: HUD should consider adopting Freddie Mac and Fannie Mae's guidelines when it comes to

condominiums, that is, limited review and full review for ''spot approvals'' for condos not listed on the Fannie Mae PERS list. Freddie takes the reciprocal of Fannie Mae's PERS approval. Review should be similar to the Fannie Mae Condo Project Manager (CPM) review (reviewing the budget, delinquencies, litigation, etc.) for the single unit only. HUD would benefit from the same level of review as the agencies and set the same protocol for certain type that would need HRAP or DELRAP approval as Fannie does with PERS. Having FHA, Fannie and Freddie all on the same page when it comes to condominium reviews will give more flexibility to certain credit type borrowers, along with product options.

If there is no guidance, some lenders may approve anything without any type of review and consider the unit acceptable as long as it is not on HUD's approved list. Perhaps HUD could have a list of staff trained in condominiums within each lender, or only allow DELRAP-approved lenders to issue Single-Unit Approvals.

HUD Response: HUD has considered these suggestions and believes that the limitations stated in this final rule are appropriate. Single units must be in projects that meet eligibility criteria and cannot have any significant issues affecting viability. HUD plans to issue further guidance under the framework provided in this rule. HUD has received a number of comments on criteria for Single-Unit Approval via this rulemaking, which it will consider when issuing guidance going forward.

Single-Unit Approval and FHA Concentration

Comment: Is there any relationship between the number of Single-Unit Approvals and the percentage of FHA-insured loans currently in the project?

HUD Response: Generally, the projects in which SUAs will occur must meet the eligibility requirements of § 203.43b(d) and (i), which place a limit on the percentage of FHA-insured loans. This rule provides that HUD may vary the specific limit, giving HUD the flexibility to respond to market needs; the total FHA insurance concentration will include all FHA-insured mortgage loans in the project, whether counted for SUAs or the overall limit.

Comment: The FHA concentration range proposed for the SUA process is the only factor that raises the possibility of severely restricting the program on a broad basis or targeting a sub-set of projects for disqualification from the underlying program. FHA now has greatly improved risk management due to improvements in data collection and the Qualified Mortgage standards (of the Dodd-Frank Wall Street Reform and Consumer Protection Act). Currently, condominiums outperform most other categories in FHA's book of business and have a lower foreclosure rate, which would allow HUD to expand access to credit while protecting the insurance fund. A minimum FHA concentration range of 0 percent is contrary to this policy goal, and could lead to a practical withdrawal of FHA from the condominium market, which would be destabilizing and contrary to FHA's countercyclical role in any future crisis to the detriment of American homeowners and communities. The lower end of the range should be 10 percent.

HUD Response: HUD recognized the need to establish a limited Single-Unit Approval process in its proposed rule and maintains that process through this final rule. HUD also recognizes that the performance of mortgages secured by condominiums had performed worse than other single-family mortgages for a time period prior to the elimination of FHA's Spot Approval process and have shown to be prone to more volatility than other mortgages. Establishing a range that includes 0 percent provides FHA with the necessary flexibility to respond to market movements that may put the FHA Mutual Mortgage Insurance Fund at risk.

Single-Unit Approval With Home Equity Conversion Mortgages (HECMs)

Comment: Seniors face difficulty in obtaining HECM loans due to the inability or unwillingness of condominium associations to have the projects approved by FHA due to the difficulty, time, and expense of the project approval process, without a single-unit option. In some cases, HECM loans are the only way seniors can stay in their home in retirement, or need the cash flow. A single-loan approval process would make it relatively simple for individual units to be approved. HUD should allow Single-Unit Approval for a reverse mortgage in any condominium complex that meets the new Single-Unit Approval criteria.

Eligibility for a HECM loan should be based on individual creditworthiness rather than the condominium association. The current requirement for whole-project approval is a form of discrimination because a detached homeowner who isn't credit worthy can more easily get a HECM loan than a highly qualified senior owning a condominium. ''Overly aggressive'' HUD requirements prevent highly qualified borrowers from qualifying for loans, and HUD should go back to spot approvals based on appraiser input of marketing data. ''The local appraiser's input would properly evaluate the short and long-term viability of the project.''

When HUD ended spot approvals, HECM loans became inaccessible to many seniors. HUD should clearly include HECM loans within the Single-Unit Approval process. The policy that HECM loans are not eligible has to do with consistency with the prior policy of terminating spot loan approvals. The program currently prevents highly qualified borrowers from qualifying for loans and fulfilling the objective of the HECM program. It is a form of discrimination.

HUD Response: While HUD does not agree that either a lack of single-unit loan approvals for HECMs or a general requirement for project approval are forms of discrimination, the availability of Single-Unit Approvals under this final rule should make HECM loans in condominium projects more widely available while recognizing the difference in ownership of single-family dwellings that are maintained solely by the owners versus condominium ownership that includes maintenance by owners and associations.

HECM mortgages may include condominium loans (see the definition of ''mortgage'' in 24 CFR 206.3) and are eligible for mortgage insurance if the project is acceptable to the Commissioner (24 CFR 206.51). For HECMs, as for forward mortgages, a condominium loan is approvable for insurance if it satisfies eligibility requirements and is: (1) Located in a project that is acceptable to the Commissioner as described in § 203.43b(d) of this rule, (2) for a single condominium unit located in a project that is acceptable to Commissioner as described in § 203.43b(i) of this rule, or (3) for a site condominium project that is acceptable to Commissioner as described in § 203.43b(j) of this rule. The requirements of § 203.43b of this rule establish the standards for a project that is acceptable to the Commissioner.

Comment: Condominium associations often are not interested in becoming HUD-approved, and therefore they could not obtain a reverse mortgage. This is a common situation (one commenter stated that only 6–8 percent of condominium projects are HUD-approved), resulting in an underserved market.

Some commenters stated that seniors were being discriminated against, and that seniors in condominiums unfairly lack the same opportunities provided to those who live in single- family homes, even if the condominium owners are more creditworthy. These commenters

sought the ability to obtain reverse mortgages, which would allow seniors to live near relatives but keep their independence, and stated that there should be an easier way than getting the entire project approved. This rule would ''re-open doors in a fiscally responsible manner for many people that have been closed for too long.''

A senior with a tax lien against a mortgage-free condominium unit would likely not be able to pay the taxes past due without a HECM loan. Some housing markets have become so expensive that even small condos are out of reach of many seniors if they are not able to use a reverse mortgage. Many seniors already in a condo need to access their equity for everyday living, medical and other expenses and long-term care. When some large banks left the reverse mortgage industry, the market lost their dedicated in-house condominium departments, which worked solely on getting condominium projects approved. More and more condominium associations do not want to go through the time and expense of getting approved. Single-unit loans should come back so that older Americans can enjoy staying in their home in retirement.

HUD Response: The Single-Unit Approval process under this rule is expected to make units more easily available, including for HECM loans.

Comment: HUD should allow a certain percentage of Single-Unit Approvals for reverse mortgages in any complex, or, in the alternative, HUD should consider wiping the project approval database for any complex without a status change in 2 years.

*HUD Resp*onse: HUD does not believe allowing a certain percentage of Single-Unit Approvals solely for HECM loans in all projects would be consistent with its fiduciary duty to the Mutual Mortgage Insurance Fund. HUD believes that making the determination of how many units would be Single-Unit Approvals based on specific factors, experience, and with flexibility to change in response to future market conditions is the correct approach. For the same reason, HUD would not agree to wipe the approval database at any periodic intervals.

Comment: The ability to apply for a HECM loan based on individual viability rather than blanket rules applicable to a whole complex is much more democratic and would logically help the economy and give more people cash flow. Allowing single-unit loans will also help the values of these condominium projects.

HUD Response: HUD has a fiduciary responsibility to the Mutual Mortgage Insurance Fund that generally precludes allowing single-unit loans without considering the project. The rule provides a framework for HUD to provide some Single-Unit Approvals and to vary requirements as needed to meet market needs.

Direct Endorsement Lender Review and Approval (DELRAP)

Commenters Questioned the Proposed Staff Experience Requirement for DELRAP Approval

Comment: It is often standard practice for a lender to employ junior underwriters with respect to condominium projects who may not have at least one year of experience, but who work under the direct supervision of a very experienced senior underwriter. Procedures are already in place to oversee this current system through FHA's quality control reviews. Accordingly, HUD should instead utilize the current guideline requirements with respect to this issue, which call for the lender to employ staff that have knowledge and expertise in reviewing condominium projects. Supervision by a senior underwriter and internal quality controls allow for underwriters with less than a year experience to work on a project while protecting consumers and the FHA.

Because each lender is responsible for the outcome of each reviewer's actions, it is best left to each lender to determine if/when a reviewer is ready to make these important decisions. HUD should make no changes to current guidance.

Comment: HUD should consider if the proposed credentialing process constitutes a barrier to entry, depressing the number of lenders eligible to process DELRAP approvals. DELRAP serves the useful purpose of increasing administrative capacity when there are bottlenecks. Such administrative capacity constraints may occur when the market is very active or when new regulatory standards are introduced. The reduction of DELRAP approvals could have negative implications for FHA's countercyclical role in the housing finance system. FHA played a critical countercyclical role in the recent financial crisis, making mortgage credit available to households, including condominium households, and accounting for 26 and 22 percent of condominium unit market originations in 2009 and 2010, respectively. Direct Endorsement lenders should be provided unconditional approval, with the understanding that qualified personnel will process condominium approvals, unless or until FHA quality control reviews identify a pattern or practice of DELRAP approval violations. Providing a list of material deficiencies found would help lenders prevent returning from unconditional DELRAP authority to a conditional status, or worse, a termination or other action.

If a Direct Endorsement lender has pattern of negative DELRAP outcomes, it would be appropriate for the Department to impose the proposed additional requirements to retain DELRAP authority at that time. This has the benefit of clearly communicating FHA expectations, which will improve the quality of DELRAP approvals and retain the efficiency of the DELRAP approval process for FHA in periods of economic stability and distress. HUD should review initial DELRAP approvals and engage in continued quality assurance reviews. Greater Direct Endorsement lender participation resulting from fewer barriers to entry in the project approval process, buttressed by the potential of penalty for non-compliance, benefits both condominium households and FHA.

HUD Response: This final rule revises § 203.8(b)(1)(iv) to clarify that staff members that participate in the approval of a Condominium Projects using DELRAP authority must have at least one year of experience in underwriting mortgages on condominiums and/or condominium project approval or be supervised by staff that meet such experience requirement. Also, in appropriate circumstances, such as where a lender has significant experience through the existing program, this final rule provides flexibility for HUD to reduce the requirement of completion of five DELRAP reviews to obtain unconditional DELRAP authority.

Other DELRAP Issues

Comment: There is no specific skill or indication of appropriate experience that could prove competency in condominium project approval. Skills such as understanding condominium financials and governing documents, understanding a reserve study, knowing what a major component is and whether a condo project is in sound financial condition do not translate to other fields. The most important skills would include HOA accounting principles, community management, and great attention to detail. The use of project consultants by DELRAP lenders would be beneficial in that the DELRAP reviewer would get a thorough review and the client would benefit from quick approval. Mistaken DELRAP approvals that are later withdrawn do not benefit anyone and add to the negative opinion of the process.

HUD Response: HUD understands the skills required to review condominium project applications for FHA approval may be varied. Therefore, this rule provides the minimum requirements for FHA approved mortgagees to become DELRAP approved, but neither prohibits nor requires the use of project consultants.

DELRAP Submission Process

Comment: Relating to conditional DELRAP approval, HUD should clarify how a lender with conditional DELRAP authority should submit its recommended condominium project approvals, denials, and recertification's to FHA for its review. An email contact will be appreciated to speed up the procedure during conditional DELRAP. It would be most efficient, and provide consistency for lenders and for FHA, if a centralized submission source and process is established for these purposes for consistency. There should be clarification of whether the material must be submitted through FHA Connection, a homeownership center, or some other avenue.

HUD Response: The specific submission requirements for conditional DELRAP authority will be detailed in Handbook guidance that will be issued following this final rule.

DELRAP vs. HRAP

Comment: Can there be flexibility where either HUD or a DELRAP lender approves condominiums? Can the lender choose?

HUD Response: The final rule establishes the process for condominium project approval by either a DELRAP approved mortgagee or HUD. With limited exceptions (For example, use of reserve studies over 36 months old, which requires HRAP under § 203.43b(d)(6)(x) or other exceptions that may be contained in guidance) either method may be utilized.

Mortgagee Letter (ML) 2016–15

Comment: HUD should not have issued ML 2016–15 in the middle of rulemaking on integrally related topics as mandated by federal legislation without further opportunity for interested parties to comment.

HUD Response: HOTMA required HUD to issue guidance within 90 days of the date of enactment to establish the required owner occupancy percentage for FHA approved projects. The 90-day deadline made it inevitable that this guidance would be issued during the overall rulemaking process. HOTMA allowed HUD to act by Mortgagee Letter.

Comment: While supporting a 35 percent owner-occupancy threshold as stated in ML 16–15, requiring a 20 percent reserve for capital expenditures and deferred maintenance will make this 50 percent owner-occupancy threshold unusable and mostly non-existent for the majority of the condominium projects. Also, the fact that HRAP is required for approval below 50 percent ''confuses and undercuts'' the emphasis on DELRAP authority as outlined in the rule. Also, the Mortagee Letter has a limitation on arrears on association fee payments and requires 3 years of acceptable financial documents. As part of its proposed rulemaking, HUD should allow comments on the Mortgagee Letter.

Comment: Owner-occupancy of 25 percent is far from generally accepted practice and could jeopardize the equilibrium between owner occupants and non-owner occupants. However, there are markets that could benefit from a flexible standard as proposed, and commenter supports a fair regulatory process that would permit a condominium to receive approval with an owner-occupancy ratio of less than 50 percent. While HUD has, as directed by HOTMA, lowered the owner-occupant rate to 35 percent, few condominiums will satisfy the conditions to actually be approved for that rate. HUD should adopt procedures and standards that would result in condominiums actually receiving such an exemption. In particular, the requirement for a 20 percent reserve rate is excessive and unnecessary. Providing an incentive to over-fund reserves could be destabilizing, and may have significant unintended tax consequences, particularly for associations using IRS form 1120. Any association that has fully funded reserves pursuant to a current reserve study should be considered as having satisfied the reserve requirement.

Comment: HUD followed the letter of HOTMA by allowing the owner occupancy requirements to be as low at 35 percent, but it did not meet the spirit of the law when it added the conditions that many have said are onerous and unlikely to be met by many condominium projects. Congress called for a lower limit to increase the number of condominiums that qualify for FHA approval, thereby increasing the number of units available to home buyers and renters. As mentioned above, condominium units are a particularly important homeownership option for first-time and low- to moderate-income home buyers, *i.e.,* HUD's target consumers. However, the addition of tighter eligibility requirements when the owner occupancy rate is below 50 percent essentially eliminates the potential of a significant increase in Condominium Associations able to qualify for approval. HUD should remove the onerous conditions for the 35 percent owner occupancy rate established in ML 2016–15, including prohibiting the DELRAP option, requiring replacement reserves for capital expenditures and deferred maintenance of 20 percent of the condominium budget, and not more than 10 percent of total units more than 60 days past due. Per the intention of HOTMA, the owner occupancy rate for all HUD-approved condominiums should be 35 percent. The comment also requests confirmation that HUD will maintain its current owner-occupancy requirement of 30 percent for existing projects less than 12 months old.

HUD Response: HOTMA mandated certain requirements that HUD must use to determine owner occupancy but did not mandate the actual owner occupancy percentage that HUD could issue through guidance, leaving HUD with discretion. HUD acted based on its experience and in accordance with its fiduciary duty to the Mutual Mortgage Insurance Fund. The final rule provides the framework to establish flexibility in applying this standard through policy guidance as market forces may dictate. HUD notes that HOTMA requires HUD to base such owner occupancy percentage on units occupied by the owners as a principal residence or a secondary residence or sold to owners who intend to meet such occupancy requirements, which would preclude a blanket inclusion of REO units, or any vacant unit not sold to an owner who intends to occupy the unit as a place of abode for at least a portion of the calendar year and does not rent the unit for a majority of the calendar year.

HUD will consider these comments when issuing such policy guidance. Such guidance will address the specific owner occupancy ratios necessary as well as address if such ratios vary based upon the construction status of the condominium.

Reserve Requirement

Comment: A 10 percent reserve requirement is excessive, and HUD should consider lowering this amount. If an association has insurance in place for hazards with 100 percent replacement cost, then ostensibly the building would be covered for any major hazards or emergencies. Further, as outlined below, if the association gathers and holds 10 percent of its annual assessment income each year, requiring a reserve account to be funded with at least 10 percent of the monthly assessments could have the effect and

probability of increasing sums held in the reserve account, and thus also increasing the amount of fidelity insurance required under the Guide.

Comment: Most people buying condominium units are not looking into reserves before buying. The greater risks of collateral declining in value are pending legal action due to faulty construction; lack of a track record for a new project; and a high percentage of rentals.

HUD Response: This rule establishes a reserve requirement of 10 percent of the monthly unit assessments, but provides for a lower reserve amount, based on a reserve study completed within 36 months, or such greater amount of time as determined by the Secretary under the HRAP review process.

Required Recertification Timeframe

A number of commenters supported extending the time for recertification.

Comment: Condominium approvals should be extended from 2 to 3 years, making it easier to submit and get condominium approvals and allowing for more flexible guidelines. Many condominium associations prohibit rentals and without FHA financing opportunities, it makes them more difficult to sell, and thus creates plummeting values. This often creates a scenario where condominium owners stop making mortgage and association payments and creates hardships on the association to where the repairs and other amenities are compromised.

Comment: Extending the provision to a 3-year period would reduce costs to associations in obtaining FHA approvals.

Comment: A project may experience a number of financial or legal changes during the 3-year period. Special assessments are frequently imposed. If HUD extends the approval period, it is strongly recommended that HUD provide examples of what constitutes ''fails to comply with any requirement for approval.''

Comment: The change to 3 years will decrease submission burdens on lenders and review burdens on HUD. HUD should further memorialize the lenders' obligation to report known changes in circumstance through explicit language in the final rule. This language should mirror current guidelines that require lenders to report any known litigation, budget deficiencies, changes to association documents that may not align with eligibility requirements, and excessive homeowners' association delinquencies that place the property in financial distress as soon as they are made known to a lender throughout the 3-year approval period. A clear provision of lender reporting requirements and reporting processes will contribute to decreased risks for both lenders and HUD.

Comment: This change will result in an increased number of projects approved and available for FHA lending with only a marginal increase in the potential for significant change since the project's approval. It will also potentially improve the customer experience as well as decrease costs to the condominium industry by reducing the need for re-approvals.

Comment: Two commenters state that the time between renewal of FHA condominium approval should be 5 years, not the current 2 years or the proposed 3 years. One commenter states that HUD and the FHA need to take into consideration how the small volunteer HOA's will implement the final rule. While a large HOA managed by a professional company can easily meet the short renewal period because that is what they are paid to do, every requirement acts as a disincentive for the small HOAs. Renewing the approval every 3 years as proposed will have little or no positive impact. The unintended consequence of the current rule has been to limit housing inventory and hurt first-time homebuyers. One commenter states that the process is daunting, the average cost of obtaining the appropriate documents and legal opinions related to the certification process can range between $1,500 and $3,000. A 5-year approval period, rather than the proposed 3 years, would be ideal for reducing the burden to the condominium associations and entice many more buildings to apply for FHA approval, while still maintaining safety and soundness.

HUD Response: HUD agrees with the comments supporting a 3-year timeframe, and this final rule retains the approach provided in § 203.43b(g)(3) of the proposed rule (§ 203.43b(h)(3) of this final rule) where projects may be approved for a period of 3 years from the date of placement on the list of approved condominiums. As noted by the commenters, the benefits of increasing the project approval period by 1 year far exceed the potential risks of changes to the project's requirements for approval while limiting the period beyond 3 years, which would run too great a risk of detrimental changes to the project. This final determination was based on FHA-insured condominium performance, consideration of risk to the Mutual Mortgage Insurance Fund, positive impact in the industry, and increase in affordable housing opportunities.

As to the comments regarding failure to comply with requirements for approval and a lenders obligation to report any changes, this rule establishes the framework for approval requirements and establishes the recertification timeframes, but does not specify the format for recertification requests. HUD plans to issue additional guidance regarding the recertification process as well as lenders responsibilities to monitor requirement on a ''loan level.''

Objections To Extending the Recertification Timeframe

Comment: Three years is too long for an approval or recertification. HOA's change their budgets every year and they don't always keep the reserves at 10 percent. Litigation and delinquencies can also be a cause for concern. Fannie Mae approvals expire every 6 months. Commenter suggests staying with the 2-year requirement.

Comment: The exiting 2-year recertification provides a minimal stop-gap to discover projects that are not in compliance. Fannie Mae effectively requires a lender to perform a full review of a project every 6 months for compliance. HOA financials show that it is not untypical to see issues such as the minimum requirement for reserve funds not being enforced; reserves have not been transferred on a regular monthly basis from the operating account to the reserve account; reserve funds have been used for purposes other than allowed; special assessments; et al. This presents a significant risk to the FHA insuring program if a unit is foreclosed and becomes a HUD REO, and the HOA financial condition poses a risk.

HUD Response: HUD has decided to retain the approach proposed in § 203.43b(g)(3) in the final rule where projects may be approved for a period of 3 years from the date of placement on the list of approved condominiums (see § 203.43b(h)(3) of this final rule). This determination was based considering the public comments received, FHA-insured condominium performance, risk to the Mutual Mortgage Insurance Fund, positive impact in the industry, and increase in affordable housing opportunities. However, HUD will take the specific comments and recommendations regarding managing project renewals under consideration when drafting future policy guidance.

Comment: Does a condo project have to meet the eligibility requirements only at the time of approval, or does it have to meet them continuously going forward?

HUD Response: The final rule establishes the eligibility requirements that must be met at time of approval and then continuously going forward. HUD will provide clarity regarding a mortgagee's responsibility to monitor approval requirements beyond the time of approval in future policy guidance.

Comment: One commenter stated that there are both positives and negatives. Negatives: With a 3-year process, more eligibility issues may develop. Staying in compliance is more likely with a 2-year recertification. Also, the cost would be more likely to stay in budget. With a 2-year process, Board Members and Community Managers are more likely to be familiar with the process and maintain certification. A 3-year recertification will require additional education of new board members. Positives: Potential cost savings, although it will be minimal; more projects would be FHA certified at a single time.

HUD Response: HUD recognizes the positive and negative factors stated by the commenter and believes that the reduced burden associated with a 3-year recertification process outweigh the effects related to Board Members' knowledge of the process.

Comment: Commenter seeks additional public input on the recertification process and for HUD to ensure that recertification burdens are eased through simplified procedures and the use of technology that facilitates providing FHA information required for recertification.

HUD Response: HUD will take this comment under consideration for future policy guidance and technology developments.

Legal Phasing

Commenters expressed concerns about the potential financial impact on projects by requiring that phases for detached and semi-detached developments must consist of groups of adjoining or contiguous homes.

Comment: Fannie Mae will sometimes allow non-contiguous developments (*e.g.,* two parcels separated by a school) if there are not common recreational facilities located on one parcel for which the unit owners would be required to travel to the other parcel having the facilities.

Comment: HUD has not offered sufficient justification to limit project approval based on phase location. This policy would deny consumers access to FHA-insured mortgages. It is appropriate that builder determine which phases will be declared and constructed based solely on the builder's assessment of market demand and sales. However, the Department proposes to deny approval for phases that are not contiguous to previously completed phases. This will not provide significant consumer or taxpayer protections. If such decisions are to be regulated, it should be by state and local governments. Proposed § 203.43b(d)(6)(x) (§ 203.43b(e) of this final rule) should be removed.

Comment: There is a potential financial impact on projects by the requirement that phases must, for detached and semi-detached developments, consist of ''groups of adjoining or contiguous homes.'' HUD should be aware that buildings are often built out of order for marketing purposes, so to require they be built in contiguous order would eliminate FHA financing opportunities for many purchasers, especially in geographic markets that do not allow for legal phasing. Also, does this requirement mean that legal phases must be contiguous in their order of construction and approval? The phases should be approved even if the units are completed out of contiguous order. HUD should remove the requirement for contiguous units or buildings for lateral (non-vertical) developments.

Comment: The FHA should limit the need for contiguous criteria to only vertical buildings, as requirements for builders to construct buildings in a specific order may limit the ability of a builder to make their projects available to borrowers in a timely manner. This would limit supply and consumer choice.

HUD Response: HUD agrees with the comments and has revised this final rule to allow non-contiguous development for detached or semi-detached buildings. If the project is complete to the extent that all units in the completed legal phase are ready for occupancy, the viability of the detached or semi-detached project is not determined by the contiguous development of the buildings.

Legal Phasing, Under-Construction Projects, and Other Related Matters

Comment: The language regarding approval of legal phases is ambiguous. Whether an entire condominium project can be approved when only the initial phase is fully complete or whether the entire condominium project must be fully complete should be clarified. If the initial legal phase is complete and approved, does each subsequent legal phase need to be submitted separately for approval? The current practice is that the approval for the initial phase would be amended with the recorded documents for the subsequent phases. Will this practice continue under the new regulations? If not, condominium developers have indicated that a process requiring separate approval of each completed legal phase would cause them to abandon the FHA market.

HUD Response: HUD has clarified in this rule that individual legal phases may be approved independently without the need for the entire condominium project to be fully complete. The establishment of the ability to independently approve phases ensures the ability to perform such approval on separate phases by multiple DELRAP mortgagees or by HRAP without the need to amend a current approval performed by another reviewer. Conversely, the rule does not prohibit such approval on separate phases by the same DELRAP mortgagee or by HRAP where the existing information on separate phases could be used in the approval process of the subsequent phases.

Comment: Requiring a legal phase to be completed will require a separate budget for the initial phase, and a cumulative budget for each subsequent phase, which is a practice required in California for phased developments. Under this practice, the regular monthly assessments for the first and initial phase(s) can (will) be substantially higher than that of the subsequent phase unit owners. This can affect the loan/payment qualifications for the initial buyers. If this rule is adopted, there should be allowed a provision for the developer to provide bonding to subsidize the initial phases of development in order to provide a maximum assessment to the initial phase(s) unit owners (*e.g.,* a maximum assessment guarantee). This is also practiced in California and serves to minimize the initial phase(s) buyers needing to qualify for a mortgage based on the higher monthly assessments.

HUD Response: This final rule provides the framework to establish flexibility in applying the rule's standards through policy (including standards for financial condition). Based on HUD's experience, the concern with monthly assessments in new developments, including those that are built in legal phases, is that they are usually subsidized by the developer as an incentive to the buyers. Additionally, any potential considerations regarding underwriting of borrowers is outside the scope of this rule. HUD, however, will consider these recommendations when updating future guidance.

Comment: The word ''project'' should be removed and only the term ''phase'' should be used to provide the greatest level of transparency/clarity possible.

HUD Response: To clarify proposed § 203.43b, proposed paragraph (d)(6)(x) is moved to a new top-level paragraph (e) in this final rule, and slightly reworded to more properly state the relationship between projects and phases, and other paragraphs are redesignated accordingly.

Comment: Clarification is needed regarding what ''sufficient numbers'' (of units in phases to be separately sustainable) means. Under current guidance, phases are appropriately permitted in segments as small as a single building. Increasing the number of units to be included within a legal phase may be detrimental to economic viability of the planned development and may not be in alignment with local building restrictions. If a legal phase is mandated to require a greater number of units, and as further stated in proposed § 203.43b(d)(6)(x)(B), the units must be built and have a certificate of occupancy, the developer will endure a significant financial hardship by carrying inventory for units that cannot be financed, or it will lead to fewer opportunities for purchasers who would benefit from FHA financing. HUD should provide more clarity on sufficient numbers of units that allows for several units that matches local ordinance or that aligns with the developer's marketing plan.

Comment: The current phasing guidelines should remain as-they are, specifically for new construction projects to ensure optionality and choice for the FHA borrower.

HUD Response: This final rule retains the proposed ability to provide project approval on phases without the need for approval of the entire proposed or under construction project (this provision is § 203.43b(e) of this final rule). A completed phase is built out, ready for occupancy, and independently sustainable. The statement that there must be ''sufficient numbers'' has been removed in this final rule because that quantity may vary in individual cases. The comments and recommendations will be considered when updating and drafting the specific guidance and procedures for determining independent sustainability in future guidance.

Comment: There is a need for additional clarity on what criteria would make a legal phase eligible due to varying state law definitions of what constitutes a phase, whether one legal phase or all phases must be complete prior to approval, and what constitutes a sufficient number of units to be considered separately sustainable.

Comment: It is unclear as to how amenities would be treated. For example, it is common in construction projects to delay construction of an amenity (such as a clubhouse) until a certain number of phases have already been completed. There is a concern that the provision, as currently drafted, would require that all such amenities be completed before project approval could be obtained, impacting standard building practices and increasing costs for builders and consumers. Furthermore, commenter notes that tying project approvals to completion of a legal phase could be burdensome and problematic from a state law perspective. There is a patchwork of state laws concerning how to properly effect legal phasing, with varying levels of difficulty depending on the state in question. This would mean that it would be a lengthier and more expensive process to obtain project approval in some states rather than others, which would negatively impact consumers in those states.

HUD Response: Under § 203.43b(e) of this final rule, a complete legal phase is one that is available for occupancy (whatever that requires under local law in terms of amenities and other elements) and self-sustaining. This regulation would not alter the existing effect of State processes on consumers.

''Infrastructure'' and Phasing

Comment: The word ''infrastructure'' as it relates to legal phase approval is somewhat vague. Although a legal phase may not include the building of a common amenity, that legal phase typically has an undivided interest in common amenities that may be proposed in other legal phases. Are these amenities in other phases thus considered infrastructure? Commenter states that HUD should define the term ''infrastructure.''

HUD Response: HUD agrees with this comment. HUD has simplified the requirements specific to phasing and has removed the term ''infrastructure''. HUD has maintained the requirement for each phase to be ready for occupancy and separately sustainable.

Comment: If this rule for requirement of project or phase completion is adopted, a provision should be added to the effect that the completion of the infrastructure can be bonded for completion, and/or to maintain the current guidelines as follows:

a. A condominium plat or similar development plan and any phases delineated therein have been reviewed and approved by the local jurisdiction and, if applicable, recorded in the land records; and,

b. The construction of the project's infrastructure (streets, storm water management, water and sewage systems, utilities), and facilities (*e.g.,* parking lots, community building, swimming pools, golf course, playground, etc.) and buildings containing the condominium units has proceeded to a point that precludes any major changes.

Comment: In-lieu-of an Environmental Review, infrastructure completion can be evidenced by:

a. Photos of the project and site to evidence completion status of infrastructure (streets, utility stubs to building pads, building foundations, buildings completed and under construction); and/or,

b. City final inspection records; or,

c. Letter (letterhead) from city stating completion or percentage of completion, or stating that the construction of the project's infrastructure (streets, storm water management, water and sewage system, and utilities) and facilities has proceeded to a point that precludes any major changes; or,

d. Completion bond release.

HUD Response: HUD has removed the definition of ''Infrastructure'' and replaced it with the definition of ''Common Elements''. As a result of this change, bonding for completion of infrastructure is not addressed in this rule. HUD will consider this comment when updating and drafting the specific guidance and procedures that will govern the analysis of determining a phase's ability to be separately sustainable.

New Construction

Allow New Construction and Proposed Construction, in Addition to Legal Phasing

Comment: HUD is proposing to remove the requirement of HUD staff conducting Environmental Reviews for new projects which do not provide evidence that the infrastructure is completed to a point where HUD would have no influence. The requirement that the project or legal phase be complete prior to submitting for approval will impose a hardship not only on the builder, but moreover, on the buyer seeking to obtain an FHA loan, because this requirement means that a phase must be completed to obtain HUD approval. However, prior HUD approval is required before the lender can obtain a case number, and a case number is required before the lender can request an FHA appraisal. Lenders typically prefer to have a cushion of 60–75 days for the process to compete an appraisal and other underwriting functions, all of which are required to be completed prior to closing the loan. In the case of this proposed rule, although the unit would be completed and ready for occupancy, the buyer would be forced to wait significant time after the phase is completed, then after it is HUD approved (30-day review for HRAP),

only then could the lender order the case number and then order the appraisal, and then complete all required underwriting. This also increases the builder's carrying cost (interest) on the construction loan, and this will have an impact on housing affordability.

Comment: The current HUD process of approving under construction, phased projects places the responsibility on the lender to determine completion, and it should be noted that the FHA lender must include evidence of completion in the Insuring Binder (Certificate of Occupancy or equivalent). Based on this alone, the FHA Insuring Program would not be at risk.

HUD Response: This final rule maintains the requirement that a project or phase be complete and ready for occupancy as a condition for approval. HUD recognizes this may impact a small segment of the market and possibly delay the time period from completion to sale, but has weighed this impact against the overall reduced burden for compliance contained in this rule as well as the balance required to ensure appropriate risk controls to protect the Mutual Mortgage Insurance Fund. HUD constantly monitors its requirements to ensure the right balance is achieved between serving the market FHA mortgages are designed to service and protecting the MMIF. HUD will take these comments under advisement in this manner.

Comment: It is not clear what the definition of ''complete'' is. Often amenities such as recreation centers aren't begun until a certain number of units are presold. Requiring adjustments to this practice in effect will not just impact condominium approval, but will require a re-evaluation of standardized and generally accepted building process timelines across the country.

HUD Response: A project or phase must be complete and ready for occupancy as demonstrated by the certificate of occupancy, or its equivalent, and includes completion of all the common elements of the project, and not subject to further rehabilitation, construction, phasing, or annexation, except in cases where the project is seeking approval for a legal phase. If a phase, it must be self-sustaining.

Comment: HUD's practice of allowing FHA loans on units in a completed building in a legal phase containing multiple buildings (two or more) does conflict with Fannie's Mae's requirement that all buildings in a legal phase must be completed (although Fannie Mae does offer a process to allow construction phasing via PERS Application). FHA should continue to allow FHA closings on such buildings when other buildings in the phase have not yet been completed. Moreover, some governmental authorities do not allow or otherwise recognize legal phasing.

Comment: Although Fannie Mae requires a phase to be completed, this does not hamper the appraisal process. A lender can order a conventional appraisal regardless of whether the project is seeking Fannie Mae approval or otherwise.

HUD Response: This final rule makes legal phasing consistent with Fannie Mae's policy regarding completion of legal phases, even though Fannie Mae has other underwriting requirements that reduces their risk of exposure, such as lower loan to value (LTV) parameters for condominium loans. However, this rule does not make changes to HUD's use of the status at the time of appraisal in determining the construction status of a property.

Comment: The requirement that the project (or initial legal phase) be fully completed and the condominium legal documents be fully recorded for the condominium to receive FHA approval will create a hardship not only on the builder but more importantly on the consumer. For the builder waiting for the full completion of construction and the recording of the legal documents will push back the processing, underwriting, and approval of the FHA loan request by at least a month or more. In addition, without FHA approval during the early marketing and sales cycle of an under-construction condominium, the builder will not be able to advertise the availability of FHA insured loans. This will increase the builder's carrying cost on their construction loan by delaying closings that could result in added cost to the consumer. Also, under the current process the responsibility is on the lender to determine completion by requiring that the lender include evidence of completion in the Insuring Binder (CO or equivalent) and thus the FHA insurance fund would not be put at risk. This proposed rule will have an extremely negative effect on the consumer by delaying access to the FHA insurance program and to the builders by delaying closing on many FHA buyers. HUD should continue its current approval processing requirements for new construction condominiums by allowing the submission of a project (or initial legal phase) while construction is still on-going and before the condominium legal documents have been recorded.

Comment: The requirement for completed phases would represent a dramatic change in building plans for new construction projects. In many instances, this proposal would significantly impact current industry practices in place for the installation of building amenities and the timing of project eligibility and approval. By requiring ''completion,'' borrowers, lenders, and builders would experience sizeable impacts due to delays in approvals and closings due to the feasibility of construction. This will ultimately make it more difficult for an FHA borrower to obtain a unit in a new construction project. HUD should allow lenders to continue with the current practice of approving proposed or under construction projects, despite the possible need for additional environmental reviews, and maintain its current guidelines. Should HUD remain concerned regarding risk management issues, HUD should require a bond or letter of credit from the builder to assure completion.

HUD Response: HUD recognizes that the completion requirement may impact a small segment of the market and possibly delay the time period from completion to sale, but has weighed this impact against the reduced burden for compliance of projects overall contained in this rule as well as the balance required to ensure appropriate risk controls to protect the Mutual Mortgage Insurance Fund (MMIF). HUD constantly monitors its requirements to ensure the right balance is achieved between serving the market FHA mortgages are designed to service and protecting the MMIF. HUD will take these comments under advisement in this manner.

Comment: As soon as the Certificate of Occupancy is approved by the local government agency, the lender should be able to start the FHA permanent financing for potential purchasers. This proposed rule will affect the mortgage industry since: Mortgage Applications are worked with potential purchasers 60 days before the Certificate of Occupancy is given by the state government (on walk-ups, this will delay the process and clients who otherwise could move to their new homes); an interim financing loan for the construction of walk-ups project (multiple low rise) is based on a peak (maximum loan disbursement before repayment starts), and if there is no repayment on the mortgage the builder cannot continue the construction and cannot sell the units.

HUD Response: HUD recognizes that the completion requirement may impact a small segment of the market including ''walk-up'' projects and possibly delay the time period from completion to sale; however, HUD has weighed this impact

against the reduced burden for compliance of project overall contained in this rule as well as the balance required to ensure appropriate risk controls to protect the Mutual Mortgage Insurance Fund.

Comment: A commenter states that they are unable to understand how the elimination of the environmental review only for HRAP applications compensates for the total prohibition of project approvals, HRAP and DELRAP, on proposed and under construction projects. If an environmental review is not required for an approval by a Direct Endorsement Lender, why is it necessary for a HUD review and approval? If HUD believes the environmental review is a burden on its staff, it seems it could be eliminated or used in more restricted circumstances. Not having FHA approval until completion may cause builders and developers to abandon the market. The advantages of allowing proposed and under construction projects to be approved, and the ability for developers to pre-sell units to FHA borrowers, prior to being fully complete far outweigh any disadvantages of environmental reviews that HUD may perceive. HUD should withdraw the proposed prohibition and keep the current requirements for proposed and under construction projects.

Comment: Condo approvals are too restrictive, resulting in decreasing condo approvals. Provisions in the proposed rule will further decrease FHA's share of the condo market. Specifically, the proposed changes to proposed and under construction approvals and Site Condominiums could result in developers leaving the FHA market to the detriment of FHA borrowers.

HUD Response: This final rule continues to allow for approval of completed legal phases, but does not permit approval of phases that are proposed or under construction. HUD constantly monitors its requirements to ensure the right balance is achieved between serving the market FHA mortgages are designed to service and protecting the Mutual Mortgage Insurance Fund. HUD will take these comments under advisement in this manner and will continue to assess the impact of this requirement as well as any impacts related to new construction projects in relation to environmental requirements in 24 CFR part 50. However, HUD believes that this rule will increase participation in the program due to the added flexibility it provides to address future market changes.

Comment: A commenter states that the requirement for completion often results in a senior waiting months to close on a HECM unit until the landscaping can be completed, weather permitting. In the meantime, seniors often have a greater expense as they have to continue renting until they can move into their new home or live with friends or relatives causing significant stress. The current regulations discriminate against seniors based on where they live. This is a problem with condominiums, Site Condominiums, and new single-family homes in cold weather states. If the landscaping is the *only* issue, then there needs to be an exception. This issue needs to be resolved quickly.

HUD Response: Substantive changes to the HECM program, as well as local law regarding real estate closings, are beyond the scope of this rulemaking. Single-Unit approvals and project approvals require that the unit be in a project that is complete under § 203.43b(d)(4), that is, complete and ready for occupancy. If local standards do not require that landscaping be completed in order for the project to be occupied, the project, or single units in the project, may be eligible if meeting the requirements of this rule.

Comment: There are concerns about the rule permitting only legal phasing and requiring each phase to be separately sustainable due to implications for new construction and FHA borrowers seeking units, resulting in substantial closing delays. Without pre-approvals that are currently issued for ''under-construction'' or proposed construction projects, a lender would not be able to order a case number until a project is approved, subsequently delaying the processing of a loan application and resulting in significant closing delays of up to 60 days. This will ultimately limit the choices for low-to-moderate income borrowers, leaving them at a disadvantage if they are seeking new construction units.

Comment: The requirement that all infrastructures be complete prior to approval of the phase/project is a significant departure from previous practice that may limit the usage of the program. Presently, approvals may be made in the framing stage of building and this new requirement could be an unnecessary and burdensome requirement. Without the ability to secure approval prior to completion, builders will be unable to market during construction and gain the necessary mortgage approvals until the final inspection for the phase/project has been completed and certified. This places an additional requirement upon builders and borrowers not present in the FHA program today as well as other agencies' programs.

Comment: Requiring all buildings in a phase to be completed will delay closings. The requirement for completed phases will cause a delay of 30–45 days for HUD approval, with an additional 15–30 days for processing and underwriting of the loan, creating negative consequences for consumers and increasing the builder's expenses in carrying interest on the construction loan, reflected in higher home prices. This change will not provide any benefits to the FHA insurance fund and will only negatively impact consumers and homebuilders.

HUD Response: This final rule maintains the requirement that a project, or phase, be complete and ready for occupancy as a condition for approval. HUD recognizes this may impact a small segment of the market and possibly delay the time period from completion to sale but has weighed this impact against the reduced burden for compliance of project overall contained in this rule as well as the balance required to ensure appropriate risk controls to protect the Mutual Mortgage Insurance Fund (MMIF). HUD constantly monitors its requirements to ensure the right balance is achieved between serving the market FHA mortgages are designed to service and protecting the MMIF. HUD will take these comments under advisement in this manner.

Comment: These provisions, if enacted, will unnecessarily delay a consumer's ability to close on and take possession of their condominium. Under the proposed regulations, a lender would not be able to order a case number or an appraisal until the project or legal phase is completed and the condominium documents have been recorded. The rule could delay closing by several months. It would also result in the builder having to hold onto inventory longer than anticipated, which would increase the costs to the builder and ultimately to the consumer. Equally troubling is the fact that homebuilders often rely upon a certain amount of presold condominiums in order to qualify for financing to construct the condominiums. The inability to obtain approval for the project or phase prior to construction and recordation of the condominium documents could, in fact, chill construction of new condominium projects altogether.

Comment: The ability to approve condominium projects prior to completion benefits both home buyers and home builders. The approval of a

proposed or under construction condominium project allows a mortgage application to be processed while the condominium unit is being constructed and decreases the time required to close the loan after a unit is completed. Prohibiting the approval of proposed and under construction projects means that a lender will not be able to order an appraisal and begin processing a mortgage loan application until the first phase of the condominium is completed. This is because a lender cannot request a case number and order an appraisal for a mortgage loan application until a condominium project has received a Project ID Number, which is not assigned until a project has been approved. This revision to the current process will result in significant delays, 60 days or longer, in the purchase and settlement of condominium units whose buyers are seeking FHA-insured financing. Developers may not be willing to offer FHA-insured mortgage loans to buyers prior to approval of a project since they cannot begin processing the mortgage application and the condominium may ultimately not be approved for months, if at all. The result will likely mean fewer condominium projects submitted for FHA-approval and home buyers interested in purchasing units in new condominium projects will not have FHA insurance as a financing option. Builders will not be incented to seek FHA approval for new construction condominiums if they can have their under-construction projects approved for conventional financing using Fannie Mae or Freddie Mac programs. FHA-insured loans will be at a significant disadvantage to the Fannie Mae and Freddie Mac conventional financing programs. This could prove a disadvantage to homebuyers who may need the advantages of FHA-insured financing, which include a higher debt-to-income ratio, smaller down payment, and less-than-perfect credit requirements.

Comment: The policy of approving only completed projects or phases will restrict access to FHA-insured mortgages for consumers seeking to purchase new construction condominium units. Further, FHA may be inappropriately influencing the market-based decisions of its private enterprise partners. Consumers benefit from this earlier review and approval as lenders are able to process loans, allowing consumers to close in a timely manner. This advance submission and approval process protects the Fund and taxpayers as a mortgage may not be endorsed until the fully recorded legal documents have been provided to FHA and acknowledged in relevant systems as having been received. The proposed rule will disrupt this process and introduce inefficiencies and delays for consumers. The proposed policy change will place consumers seeking to obtain FHA-insured mortgage credit at a market disadvantage, lead such consumers to more expensive mortgage loans and will delay closings for an undefined policy benefit. The potential for delayed closings will also alter builder business decisions, which may have unintended consequences for consumers. It is well established there is a lack of affordably priced housing available to lower and moderate-income households. It seems counter to federal and state policymaker efforts to increase the supply of affordable homes to limit consumer access to FHA-insured mortgages and alter the business economics of the builder industry. HUD should remove § 203.43b(d)(4).

Comment: The proposed rule may impose an unduly high burden on new construction with the requirement that the project phase be ''complete and ready for occupancy, including completion of the infrastructure of the project or legal phase, and not subject to further rehabilitation, construction, phasing, or annexation, except to the extent that approval is sought for legal phasing in compliance the requirements of proposed (d)(6)(x) of this section'' (§ 203.43b(e) in this final rule). New construction projects do not always fully incorporate the common elements of a project until there are sufficient residents within the project to sustain those features. Necessitating the absolute completion of all common elements would substantially limit the ability for purchasers to obtain FHA financing until the project is well established. Commenter believes that the current requirement that common elements be ''substantially complete'' is sufficient and should be maintained.

HUD Response: This final rule continues to allow for approval of completed legal phases but does not permit approval of phases that are proposed construction or under construction. HUD recognizes this may impact a small segment of the market and possibly delay the time period from completion to sale, but has weighed this impact against the reduced burden for compliance of a project overall contained in this rule as well as the balance required to ensure appropriate risk controls to protect the Mutual Mortgage Insurance Fund. HUD continues to assess the impact of this requirement as well as any impacts related to new construction projects in relation to environmental requirements, 24 CFR part 50.

Site Condominiums

Comment: Site Condominiums should not be placed into the proposed approval process. HUD should maintain the definition and approval process currently in place.

HUD Response: This final rule maintains and expands the definition of ''Site Condominium.'' This final rule is more inclusive of additional configurations of Site Condominiums that exist in the market. Site Condominiums must meet the definition in § 203.43b(a)(7) and the basic requirements of § 203.43b(d)(1)–(5). Insurance and maintenance costs must be the responsibility of the owner as provided in § 203.43b(j).

Comment: HUD's current definition of a Site Condominium should include the provisions relating to insurance, maintenance, and common assessments.

Comment: Insurance and maintenance costs must be the sole responsibility of the owner with respect to Site Condominiums, and any common assessments collected must be restricted to use solely for amenities outside of the footprint of the individual site. Site Condominiums generally do not have master insurance policies associated with the condominium itself; therefore, this would be consistent with industry and market practice.

HUD Response: HUD believes that the revised definition of Site Condominium in 24 CFR 203.43b(a) combined with the separate regulatory requirements for unit owners in 203.43b(j) provides the correct balance in addressing Site Condominiums based upon the market's reaction of treatment of such properties as a potential substitute for other detached dwellings.

Comment: Certain provisions of the definition should be clarified: (1) The word ''site'' is interpreted variously. The comment recommends the inclusion of the word ''land.'' (2) Many condo plans limit ownership interests in land and air space by creating three-dimensional envelopes or modules. These envelopes or modules may be created in relation to sea level. The unit owner's interest remains within the envelope or module, and is, thus, limited. The areas outside of the envelope or module is considered common area. HUD's current definition suggests unlimited ownership of air space and land and does not consider the typical legal construction of such areas.

Comment: Various HOC reviewers and mortgagees interpret HUD's Site Condominium language to mean

''ownership of air space and land that generally limits some other use.'' Obviously, this interpretation differs from the literal language. We recommend that HUD clarify by adding words such as ''unlimited'' or ''at least X above sea level'' or some other language that makes clear what HUD intends when envelopes or modules limit ownership.

Comment: HUD's failure to provide comprehensive guidance on Site Condominiums results in an uneven playing field among mortgagees.

Comment: Under prior 2009 HUD guidance, a detached condo unit was simply defined as a completely freestanding structure. In 2011, HUD then defined a Site Condominium and required certain characteristics (*e.g.,* insurance, maintenance) including the unit must include the ground (to the center of the earth) and the air space (to infinity), without restrictions. HUD further recognized the insurance issue with the ground restriction and issued an Insurance Waiver. Some states such as California allow the unit site ownership to extend below the ground surface and/or the air space above the structure to be limited, such as 50 ft. below and/or 50 ft. above the structure. The areas beyond these limits are common area and/or association property. The requirement that there can be no restriction or limit on the ground beneath and the air space above a structure serves no purpose and this would not jeopardize the FHA insuring program.

HUD partially recognized this matter in its issuance of the Insurance Waiver, which allowed the unit owner to be responsible for insurance if there was a limit on the ground beneath the structure or if it is common area. However, the Insurance Waiver does not take into equal consideration the air space above the structure. This may have been an oversight in drafting the Insurance Waiver. If the current definition of a Site Condominium will remain intact, we would propose that the Insurance Waiver be revised and codified to the extent of allowing the air space above a unit to likewise be deemed as common area.

Comment: HUD's requirements are too strict; HUD should mirror Fannie Mae's guidelines. Fannie Mae does not require that detached condos must include the air space above and the ground beneath the structure. Likewise, the Department of Veteran's Affairs (VA) does not place such restrictions or otherwise define Site Condos for eligibility. Both attached and detached condos require VA approval. The waiver was issued to expand project eligibility for those projects where the legal governing documents required that obtaining and maintaining the insurance was the responsibility of the unit owner.

HUD Response: This final rule revises the Site Condominium definition under § 203.43b(a)(7) to remove the consideration of the type of air or land ownership for detached units as well as to address land ownership requirements for townhouse style projects. HUD believes this change will substantially reduce or eliminate the need for such Insurance Waivers and provides the correct balance in addressing Site Condominiums based upon the market's reaction of treatment of such properties as a potential substitute for other non-condominium ownership style dwellings.

Air Space Common Area and Site

Comment: Section 1.8.1 of the Guide, because of the inclusion of air space, which may not be a common area, in the definition of Site Condominium, conflicts with California law with the result that in California, Site Condominiums are not exempt from full project review, unlike Site Condominiums generally. This will increase costs and time to obtain approval and could cause developers to stop offering FHA financing. Under California law and that of some other states, there is an ''air space common area'' requirement for detached Site Condominiums that include a residence, yard, and other improvements that are wholly owned, maintained, and insured by the buyer. The vertical and horizontal boundaries will have no bearing on a detached condominium's value, nor do they have an impact on the use of the condominium by its owner. Lower vertical boundaries are typically placed well below the earth's surface, and upper vertical boundaries are placed at elevations above the unit that could be of no possible use or benefit to the unit owner. The three-dimensional separate interest is not created to limit use of any area; it is simply created to comply with California law. A condominium unit that fails to identify its vertical limits, as HUD appears to require for a Site Condominium, may be a violation of the California Subdivision Map Act.

HUD has previously allowed detached condominiums with this air space common area to qualify as exempt from full condominium project approval under the Guide. HUD's change of interpretation of section 1.8.1 of the Guide is troubling, as California detached condominiums look and function like a traditional single-family detached residential project where the homeowner wholly owns, maintains, and insures his or her residence as well as all other improvements within the footprint of the detached condominium unit. Neither Fannie Mae nor VA have such an air space requirement. The air space common area, and boundaries placed below the earth's surface, require no maintenance and do not impair the project's ability to function like a single-family detached project. It is not clear how including air space and indefinite lower boundaries as a common area would create a risk for the insurance fund. The fact that master insurance policies associated with the Site Condominiums generally do not exist supports removal of the ''site and air space'' component.

Commenters suggested removing ''site and air space'' from the definition of ''Site Condominium'' in § 203.43b(a)(7), and other revisions. HUD will be better served because fewer single-family detached projects will have to be submitted for full project approval. Homeowners will be better served by allowing the individual homeowners to obtain insurance on their single-family homes instead of an association policy required under full HUD–FHA approvals. The mention of ''air space'' is not typical in the industry and any risk should already be addressed by FHA's requirement that all state and local ordinances be followed.

One commenter suggests adding to the end of the proposed definitions of ''Condominium Unit'' and ''Site Condominium'' the following: ''(as defined under any applicable local laws or statutes governing the creation of common area or limited common area)''. Another comment suggests revising the definition as indicated:

"Site Condominium means a single family detached dwelling (which does not have a shared garage or any other attached building, including such improvements as archways or breezeways), which is encumbered by a declaration of condominium covenants or condominium form of ownership, and which consists of the entire structure ~~as well as the site and air space~~ and no part of the dwelling or structure, or any other improvement considered to be a part of the condominium unit is not considered to be a common area or limited common area (as defined under any applicable local law or statutes governing the creation of common area or limited common area)."

Another comment suggests:

Site Condominium means a single family detached dwelling (which does not have a shared garage or any other attached building, including such improvements as archways, or breezeways), which is encumbered by a declaration of condominium covenants or condominium form of ownership, and which consists of the entire structure and no part of the dwelling or structure, or any other improvement considered to be a part of the condominium unit is considered to be a common area or limited common area (as defined under any applicable local laws or statutes governing the creation of common area or limited common area). Such Site Condominium may have upper and lower vertical boundaries to the extent required to comply with applicable State law provided that all structural improvements of the Site Condominium are contained within such upper and lower vertical boundaries.

HUD Response: HUD agrees with the commenters and has revised the Site Condominium Definition under § 203.43b(a)(7) to include its easily determined physical attributes and land ownership attributes without the consideration of air space. These revisions allow more configurations of Site Condominiums to be eligible. In addition, § 203.43b(j) of this final rule (§ 203.43b(i) of the proposed rule) has been revised to require only that insurance and maintenance costs of the individual units must be the sole responsibility of the unit owner for Site Condominiums, without stipulating any additional requirements for use of assessments. Hence the rule avoids potential conflicts with local law and is clearer for the public. Accordingly, future guidance will reflect this new policy.

Site Condominiums—Appraisal Reporting

Comment: HUD should direct lenders to accept the 1004/70 URAR Appraisal Form for Condominiums. While the Legal Description indicates these properties as being Condominiums, most are marketed as, perceived as, utilized as, Single Family Homes, with front, side and back yards, no shared walls, and often no shared maintenance other than ''common areas,'' *i.e.,* parks, trails, bike paths, etc. The Properties are being Listed/Marketed as Single-Family Homes and more often indicated as having defined Lot Sizes. This recent phenomenon is a result of developers looking for ways around county platting requirements that slow the development/building process. This hybrid property has all the attributes of a Planned Unit Development or single-family home, yet as it is legally a condominium and lenders are requiring the appraisal report be developed on Form 1073/465. Form 1073/465 encompasses the attributes of developments where the owners have shared ownership responsibilities that include site maintenance, exterior structural maintenance, and shared structural liabilities, none of which apply to the single-family Condominium or Site Condominium. Until the lending community, and more specifically Fannie Mae/Freddie Mac, address this new Property Type, the only current form that can accurately address the attributes of the Site Condominium is the 1004/70 URAR. Furthermore, the use of the Condominium Form 1073/465 could be misleading to the reader expecting a property that adheres to the more traditional condominium regime.

One commenter stated that he uses the following language in appraisal reports: ''An Extraordinary Assumption is made that the use of the 1073/465 Form will not be misleading. In developing this report and the Opinion of Value, this Appraiser has utilized a Hypothetical Condition that the Subject is Single Family Residential to best represent the Markets Perception of the Subject''. As these properties become more prevalent, there is a need for a clear directive to the Lending/Appraisal community. Until the GSEs can address the issue of this hybrid property type by developing a new form that encompasses the unique character of these properties, HUD should direct lenders to accept the 1004/70 URAR as the standard appraisal form for these entities.

HUD Response: The practices associated with appraisal of Site Condominiums are outside the scope of this rule; however, HUD will take this comment under consideration for future policy guidance.

Free Assumability and Private Transfer Fees

Comment: 24 CFR 203.41 currently prohibits mortgage insurance if a mortgaged property is subject to an affordability covenant that survives foreclosure or certain foreclosure alternatives. The nation is experiencing a growing housing affordability crisis, particularly in housing markets where condominium projects may play a productive role in meeting this need. The affordability crisis is leading many jurisdictions to require an affordability component in new condominium projects and multi-family rental housing developments, reserving units for sale or rent at affordable prices. FHA should work with local governments and developers to approve all units in such condominium projects. Fannie Mae and Freddie Mac are currently supporting access to affordable homeownership by accepting delivery of loans subject to an affordability covenant that survives foreclosure. FHA should join this effort and amend § 203.41 to permit FHA insurance for mortgages secured by a condominium unit subject to a covenant designating the unit as an affordable housing unit where the covenant survives foreclosure.

HUD Response: Such a consideration would encompass a review of such a requirement across all programs affected by 24 CFR 203.41 and not limited to only Condominium Projects, and therefore is beyond the scope of this rulemaking. However, current guidance addressing permissible restrictions on conveyance for condominiums remains in effect.

Comment: Section 301 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA) mandates that with respect to mortgage insurance for

condominiums, HUD shall utilize the guidelines developed by the Federal Housing Finance Agency (FHFA) regarding private transfer fees. Two comments strongly support this provision which brings consistency and clarity regarding private fees across the industry. Therefore, HUD should confirm whether this provision is self-effectuating. If HUD believes that it needs to take action to effectuate this provision, HUD should do so swiftly, in order to avoid unnecessary confusion in the industry. Furthermore, HUD should consider applying these FHFA private transfer fee standards across all of HUD's programs, including, but not limited to, single-family mortgage insurance (for all FHA programs). This will provide one standard for the treatment of private transfer fees throughout the industry, reducing unnecessary complexity and confusion to the consumer's benefit. Lacking direction from HUD, the industry is subject to inconsistent application of guidelines between lenders which can negatively impact consumers due to unnecessarily limiting products and/or lender availability in certain communities.

Comment: The immediate adoption of FHFA's rule will provide consistent guidelines for the industry and will for expansion of eligible projects, so long as the private transfer fees are to the benefit of the borrower (*i.e.,* maintenance fees). The Mortgage Bankers Association believes that this change will create clearer and consistent guidelines across agencies, making it easier for lenders and FHA to serve the FHA borrower.

Comment: Private transfer fees that simply provide income to the developer or another entity are problematic. However, there are many private transfer fees that support the condominium facilities or provide tangible benefits to the homeowner. Acceptable of these ''good'' transfer fees, but rejection of the ''bad'' transfer fees is the standard employed by the FHFA. HOTMA requires HUD to adopt the ''existing standards of the FHFA relating to encumbrances under private transfer fee covenants.'' The commenter agrees with HUD that this provision is immediately effective.

Comment: This rule should address transfer fees as it is a requirement by HOTMA. HUD should either revise 24 CFR 203.41 in this rulemaking, even if another 30-day comment period is immediately effective.

HUD Response: Section 301 of HOTMA on private transfer fees is self-implementing. HUD may consider issuing a regulation on this subject in the future.

Leasing of Units

Comment: Limiting short-term leases may promote the residential use and character of a condominium project and the commenter recommends that HUD revise regulations at 24 CFR 203.41 to incorporate permissible leasing restrictions currently provided in section 1.8.9 of the Condominium Project Approval and Processing Guide.

Comment: HUD should reconsider its blanket objection to Association review of leases. Without prior notice or approval, a condominium board has no ability to enforce leasing restrictions to ensure the project continues to meet FHA owner occupancy requirements. Condominium boards have an ongoing interest in maintaining FHA approval criteria and FHA's general view that any condominium where the board has either direct or indirect approval authority of a lease is contrary to this interest. In taking this position, FHA is elevating one-unit owner's interest above the interests of all other owners. Allowing a well-defined and limited authority to act in a manner that preserves FHA approval benefits owners and consumers. HUD should revise regulations at 24 CFR 203.41 to provide a limited prior approval of leasing by a condominium association board to the extent exercise of such authority will retain the condominium's project compliance with FHA owner occupancy requirements.

HUD Response: HUD appreciates the recommendation and will take it under consideration for future policy guidance. Such a consideration should encompass a review of such a requirement across all programs affected by 24 CFR 203.41 and not limited to only Condominium Projects, and therefore is beyond the scope of this rulemaking.

Right of First Refusal

Comment: One of the main reasons for condo non-approval in Florida has been the insertion of language stating that the condo board has the right to reject potential tenants and purchasers. Since 2013, there has been a zero-tolerance policy for any right of first refusal (the commenter states that this is based on the Fair Housing Act). This has resulted in condos with good financials being denied approval. It is difficult to change a condo's governing documents. Fannie and Freddie do not have this issue. The condominium board could sign a certification that it does not utilize the objectionable provisions. In the instance of a spot approval, assuming that the condo met usual financial and insurance guidelines a potential solution would be to waive any concern regarding the first refusal issue. This would help increase the supply of affordable housing.

Comment: Since 2013, the Atlanta HOC has taken the position that the condominium associations have to change their governing documents to remove the right of first refusal. Changing the bylaws for a condominium association of any size can only be accomplished once a year at the time association board elections are held. Doing so entails significant expense, including substantial legal fees and costs that are eventually borne by the individual unit owners through increased assessments to maintain the association budget. Also, while the legal structure of some condominium associations may vary, most require the affirmative vote of 100 percent of all owners to agree to modify the bylaws, which is impractical in a community of any size. Many Florida condominium association boards are willing to execute a formal and binding certification on an annual basis that the association does not and will not utilize any of the right of first refusal provisions in its charter. In this way, such associations would not be required to amend their charters if a resident desires FHA financing. Therefore, the final rule should clarify that boards of Florida condominium associations whose charters contain rights of first refusal may execute a formal and binding certification on an annual basis that the association does not and will not utilize any of the right of first refusal provisions, so that units can be approved for FHA-insured financing.

Comment: Approximately 75 percent of the condominiums in Florida have a right of first refusal, which is major obstacle to HECMs. There is less than a one percent chance of getting these lease restrictions changed. HUD should drop this leasing language as part of its SUA process.

HUD Response: HUD does not address rights of first refusal in this rulemaking; however, the existing guidance permitting the right of first refusal for condominium project approval will be continued in effect. HUD will address rights of first refusal generally in a future rulemaking, as this topic is outside the scope of this rulemaking.

Approval by the State

Comment: If a project meets the requirements of the relevant State oversight agency, that should be sufficient for approval. There could be a document covering single-unit loans

to determine the current operating status of the project.

Comment: HUD should insure loans in condominium projects approved by the Department of Business and Professional Regulation (DBPR) in each State of the U.S. In Florida, this could be accomplished by HUD officials working with officials at the Division of Condominiums, Time Shares and Mobile Homes which is a Division within the DBPR. After HUD/FHA is assured that the State requirements for condominium approval are sufficient, an identification number issued by the State could be used for loan processing. Compliance with Fair Housing laws will be the responsibility of all parties to the real estate transaction such as the Realtor, Lender, Condominium Association Board, etc.

HUD Response: HUD disagrees with the recommendation of insuring loans in condominium projects that are approved by the state agency responsible for regulating condominiums in every state. By HUD adopting national standards for condominium project approvals, industry members would benefit from clear, consistent, and enforceable standards that would reduce confusion and increase efficiency in the market. In addition, the condominium standards and processes that will be established through this rule are similar to the conventional market's processes, and HUD believes that such consistency will have the least impact on the industry.

Lender Liability Post-Approval

Comment: If a lender that obtains DELRAP approval under the new guidelines approves a condo are they later liable for loans approved by another lender? This example would assume that Lender A properly approves a condo project and that all documentation is in order. Lender B later underwrites an FHA loan in this project and their underwriting is faulty—the loan goes into default and causes a claim to the MMI fund. In this example, is lender A still liable? Clarity around this issue would be welcome as making lenders liable for underwriting errors beyond their control would cause many of them to rethink DELRAP approval.

HUD Response: Based on the commenter's example, Lender A would not be liable for Lender B's faulty underwriting of an FHA loan. A lender with DELRAP approval that approves a condominium in accordance with the new guidelines does not have loan-level liability for another lender's underwriting errors. Of course, each case is different and would have to be assessed on its own merits.

Condominium Associations Unwilling To Cooperate With Project Approval

Comment: A commenter, a reverse mortgage loan originator, provides an example of a client living in an upscale condominium in town. The owner has a tax lien certificate against her mortgage free condominium unit for 2015 property taxes that are past due, and it is unlikely that she will be able pay the 2016 property taxes as well. The commenter and owner have both tried for months to get the condo association to help, but the process has stopped. The commenter states that it will be a shame that this senior will eventually have to vacate her residence and lose the lifestyle she is accustomed to because of those in power are not willing to help. There has to be a better way.

Comment: Many formerly FHA approved condominium projects have expired and associations do not or cannot get the projects re-approved. This limits the supply of housing to first-time buyers who require FHA loans to purchase a new condominium effectively locking them out of many homes and limiting their housing options. HUD is to be applauded for taking concrete steps to solve this problem. Further, we urge HUD to adopt Fannie Mae and Freddie Mac approval processes. This will create a more uniform and fair condominium approval process across the home mortgage spectrum. It will allow low- and moderate-income home buyers access to more financing options that currently exist.

HUD Response: HUD appreciates the comment. The final rule includes the ability to obtain Single-Unit approval in an unapproved condominium project as an opportunity to provide access to FHA's programs in this or similar situations.

Insurance Requirements

Comment: One commenter stated that there is no reason to continue the requirement for a fidelity bond of 3 months' aggregate assessments plus reserve funds, unless state law mandates required coverage. In today's practice, most condominium association dues are directly deposited electronically into an FDIC-insured bank account, and such accounts are insured up to $250,000. Given this expedited and more secured cash flow based on more prevalent and modern electronic payment practices, in our view, there is no reason to continue the requirement.

HUD Response: Although fidelity insurance is not specifically addressed in this final rule, it would be covered under the general insurance requirements under § 203.43b(d)(6)(iii). HUD appreciates the comment but disagrees with commenter's overarching recommendation to eliminate the requirement for fidelity insurance (which insures against losses for fraud or dishonesty) based upon the prevalent use of direct deposit into an FDIC insured accounts, which are insured against loss due to bank failure. Accordingly, HUD has implemented the aforementioned section of the final rule as proposed.

Comment: We note that the Insurance Waiver is not included as part of the Proposed Rules. Will the Insurance Waiver currently in effect, and due to expire on January 5, 2017, be codified as part of the Proposed Rules and/or appear permanently as part of the Single-Family Housing Policy Handbook 4000.1?

HUD Response: This final rule does not provide for specific standards, but for a framework to establish HUD's specific requirements through policy. HUD will consider this comment when drafting further policy guidance.

Exceptions Under Proposed § 203.43b(f) Generally

Comment: HUD should clarify the process by which exceptions are requested and approved and provide additional guidance on the limits of the Secretary's exception authority, if not in the rule itself then in guidance. This will prevent situations where condominium associations surmise the project will not meet all approval standards and, therefore, decline to seek project approval, and limit instances where associations incur additional expenses to get into full compliance when they would have been eligible for an exception. Clear guidance will also ease processing burdens by limiting exception requests where HUD will not approve. Clear guidance will indicate that FHA is a reliable partner. Therefore, HUD should provide a standardized exception request process that clearly identifies the approval criteria for which an exception will be contemplated, and publish clear guidance concerning the exception process and provide examples and reasonable conditions that may result in approval of an exception request.

HUD Response: HUD appreciates the recommendations and will clarify exception process requirements in the policy handbook that will be issued as a result of this final rule. However, HUD believes the rule addresses the factors

that must be considered in determining whether to grant an exception while contemplating that such exceptions will be considered on a case by case basis which precludes the use of any one standard.

Implementation Timeframe

Comment: A 12-month implementation period will be needed given multiple significant industry compliance changes.

HUD Response: This final rule provides for a 60-day implementation timeframe that allows stakeholders to view additional guidance provided in HUD handbooks prior to implementation.

V. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The information collection requirements of this rule revise a currently approved information collection (OMB Control No. 2502–0610). This information collection reorganizes and consolidates, in a less burdensome and more user-friendly format, the information currently required in form 96027, Condominium Project Approval Document/Checklist; form 96028, Condominium Project Annexation Checklist; 96017, Program Certification; form 96018, Loan Level certification; and form 96019, Pre-Sale certification.

The burden of the information collections is estimated as follows:

Current information collection (OMB approval No. 2502–0610)	New information collection	Burden hours (current)	Burden hours (new)	Net change
Package preparation		2.00	1.00	−1.00
Package review		1.00	1.00	0.00
935.2c AFFH Plan		6.00	3.00	−3.00
92541 Builder's Certification		0.10	0.10	0.00
92544 Warranty of Completion of Construction.		0.03	0.03	0.00
96029 Condominium Rider		0.10	0.10	0.00
96017 Program Certification/Project Certification.		0.10	0.00	−0.10
Loan level certification		0.30	0.00	−0.30
Pre-sale certification		1.00	0.00	−1.00
96027 Condominium Project Approval Cover Document/Checklist.		1.00	0.00	−1.00
96028 Condominium Project Annexation Checklist.		0.30	0.00	−0.30
	Model FHA Condominium Loan Level/Single-1 Unit Approval Questionnaire.		.75	.75
	Model HRAP–DELRAP FHA Condominium Project Approval Questionnaire.		1	1
Total		11.93	6.98	−4.95
Total hours per annum		90,660	22,000	−68,660

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5563) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947; and

Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, Room, 451 7th Street SW, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Executive Order 13771

Executive Order (E.O.) 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings and deregulatory effect of this proposed rule can be found below in the Summary of Regulatory Impact, Benefits, and Costs, and in the separate Regulatory Impact Analysis.

Summary of Regulatory Impact, Benefits, and Costs

This rulemaking addresses a market failure that occurs when lenders ration credit instead of charging the appropriate risk premium; that is; when lenders consider denying a loan to be a superior business decision than raising prices. In the mortgage insurance market, such a market failure occurs when borrowers are willing to buy insurance at an actuarially fair price, but suppliers cannot sell at the cost of providing the insurance. One reason this occurs is lack of information. Adverse selection occurs because borrowers who are attracted to higher LTV loans are less able to withstand financial shocks. However, even with information about the household's resources, it is difficult for private insurers and lenders to predict the probability of default, which depends on trends in financial and real estate markets. This can cause a contraction of supply such that the equilibrium market response is an undersupply of credit and limitation of housing choices. In such periods, low-income households wishing to buy affordable homes, such as condominiums, would be the first to be excluded from the market.

FHA's role with respect to market failure due to an undersupply of credit is a countercyclical one. FHA serves to reduce market imperfections due to information asymmetry. When risk increases in the presence of information asymmetries, lenders ration credit (withdraw from the market) as opposed to adjusting interest rates. FHA provides a buffer in such circumstances; FHA's market share varies inversely with the ease of credit. Greater access to credit can be considered a benefit.

Mortgage insurance is required for high LTV loans. FHA provides mortgage insurance at average cost to qualified borrowers. FHA does not crowd out or replace the private sector, but instead fulfills unmet demand for mortgage insurance when private insurers withdraw from the market. Similarly, FHA's market share declines when there is less uncertainty in the real estate and mortgage markets.

Condominiums provide an affordable homeownership option for borrowers who may qualify for FHA mortgage insurance in high-cost or dense areas. Evidence suggests that there is an imbalance in FHA's treatment of condominiums in relation to single-family housing. Creating a level playing field is important in facilitating consumer choice, especially in the housing market where spending on housing represents a large proportion of a household's budget. Any distortionary regulatory costs that do not serve a greater public purpose reduce social welfare.

The proportion of FHA-approved condominiums relative to the estimated size of the condominium market in the United States provides an indicator of the need for FHA guidance that simplifies the FHA condominium project approval process. In 2001, 8.4 percent of FHA loans were for condos, but the share has dropped since then, reaching its low of 2.1 percent of all FHA loans in the most recent complete year of 2018.

The rule addresses this market failure by deregulating some of the more burdensome aspects of the approval process to allow more condominium units to be purchased with FHA-insured mortgages. The rule will reduce the compliance costs of condominium lending. Analysis shows, however, that this will be a limited effect which will not result in an outsized market share for FHA. It is extremely unlikely that the maximum volume would exceed the historic peak of 73,000 loans in 2010, so that could be regarded as the potential upper limit. HUD would not expect the equilibrium share of condo loans to be greater than the market average given by FNMA's condo share of 10 percent, which would require an increase of 71,000 condo purchase loans. More likely, the rule is expected to have a moderate effect on volume with a maximum impact ranging from 20,000 to 60,000 loans.

The deregulatory changes to the program, while burden reducing, are not so great as to significantly change the nation's housing choices. The measurable expansionary impacts of the rule are small relative to the market, where annual combined cooperative and condominium sales are about 600,000 units and are counterbalanced to a degree by risk-management strategies (such as the requirement for review by HUD or qualified, experienced DELRAP lenders). Also, some FHA condominium borrowers will substitute from FHA single-family homes.

This rule will result in savings from increasing the periodicity of approval from 2 to 3 years equal to $1.5 million annually. Reducing environmental reviews could save as much as $2.1 million annually. Quantified costs reductions are therefore about $3.6 million annually. The costs of requiring project approvals are an estimated paperwork burden cost of $2.7 million annually. The overall quantified cost savings of this rule are therefore about $900,000 annually. There is also a non-monetized benefit of increased policy flexibility. By adjusting to market conditions, FHA will be able to strike the correct balance between providing affordable housing and risk management.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). This rule was determined to be a ''significant regulatory action,'' as defined in 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. The Regulatory Impact Analysis (RIA) prepared for this rule is also available for public inspection in the Regulations Division and may be viewed online at *www.regulations.gov,* under the docket number above.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any Federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available online at *www.regulations.gov.* The Finding of No Significant Impact is also available at for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street

SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule establishes regulations for single-family mortgage insurance of condominium units pursuant to 12 U.S.C. 1707 and 1709. However, HUD has been providing mortgage insurance for this purpose pursuant to statute and the Condominium Approval and Processing Guide published in 2011.

The rule codifies requirements for DELRAP lenders, many of which are small entities. However, it is worth noting that many of these lenders are likely affiliated with much larger financial institutions, based on the names associated with the IDs. Of the few thousand unique originating mortgagee IDs in each year from 2001 to 2018, the median number of mortgages is always under 100. Additionally, for originating mortgages from 2012 through 2018, the median number of condo mortgages is exactly 1 in each year. While this data may seem to make a strong case for the prevalence of small entities, these entities likely have resources at their disposal that are not available to a typical small entity in other industries.

To be qualified for Direct Endorsement authority, a mortgagee must satisfy the following characteristics: Possess at least one year of experience in condo loans; have made at least 10 FHA approved condo loans; possess a quality control plan; and participating staff must possess or be supervised by those with prior experience. All of these requirements would be easier to meet by larger firms with greater capacity. Nonetheless, small firms that have at least occasional experience should be able to satisfy the requirements without undue burden. The ability to have staff supervised by those with experience in lieu of requiring all participating staff to have experience will substantially lessen the impact to small firms. Additionally, approval as a DELRAP lender is not required in order to perform any of the functions of a DE Lender including the ability to originate mortgages under Single Unit Approval or on units in projects approved under, HRAP or DELRAP authority of another lender.

Other elements of the rule lift regulatory burdens. First, allowing Single-Unit Approval enables small lenders business opportunities without the cost of seeking approval for an entire condominium project. HUD estimates that project approval will take approximately 3 hours at $64/hour, for a total cost of about $192 per project. Single-unit approval is estimated to take approximately 1.5 hours, also at $64 per hour, for a total of about $96 per unit.

Second, by providing that only completed projects may be approved, this rule eliminates the need for HUD to require an environmental review as a condition of approval. If the rule had allowed approvals of uncompleted new construction projects, in the case of DELRAP processing, lenders, including small lenders, would have been responsible for ensuring that environmental reviews were completed according to applicable State and local requirements. Thus, the rule eliminates a potential cost with respect to those condominium projects approved through DELRAP. Based on the costs to the government of an environmental review, HUD estimates the potential costs that would be saved per project reviewed as follows. The fixed cost for an environmental review, including travel per review, is approximately $500. The average number of staff hours per review is 16 hours, and the labor cost per review is $64 per hour, for a total labor cost of $1,024 per review. The total labor and fixed costs that would be saved are $1,524 per review.

Also, participation in condominium insurance, like HUD's other mortgage insurance programs, is purely voluntary.

Therefore, the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR parts 203 and 234 is 14.117.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

For the reasons stated in the foregoing preamble, HUD amends 24 CFR parts 203, 206, and 234 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z–16, 1715u, and 1715z–21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

Subpart A—Eligibility Requirements and Underwriting Procedures

■ 2. Add § 203.8 before the undesignated center heading ''Miscellaneous Regulations'' to read as follows:

§ 203.8 Approval of mortgagees for Direct Endorsement Lender Review and Approval Process (DELRAP).

(a) *General.* Each mortgagee that chooses to participate in the review and approval of Condominium Projects, as set forth in § 203.43b, must be granted authority to participate in the Direct Endorsement Lender Review and Approval Process (DELRAP).

(b) *DELRAP Authority*—(1) *Eligibility.* To be granted DELRAP authority, as described in § 203.43b, a mortgagee must be unconditionally approved for the Direct Endorsement program as provided in § 203.3 and meet the following requirements:

(i) Have staff with at least one year of experience in underwriting mortgages on condominiums and/or Condominium Project approval;

(ii) Have originated no fewer than 10 condominium loans in projects approved by the Commissioner;

(iii) Have an acceptable quality control plan that includes specific provisions related to DELRAP; and

(iv) Ensure that staff members that participate in the approval of a Condominium Project using DELRAP authority meet the above requirements in paragraph (b)(1)(i) of this section or are supervised by staff that meet such requirements.

(2) *Conditional DELRAP Authority.* Mortgagees will be granted conditional DELRAP authority upon provision of notice to the Commissioner of the intent to use DELRAP. Mortgagees with conditional DELRAP authority must submit all recommended Condominium Project approvals, denials, and recertifications to FHA for review. If FHA agrees with the mortgagee's recommendation, it will advise the mortgagee that it may proceed with the recommended decision on the Condominium Project.

(3) *Unconditional DELRAP Authority.* Mortgagees will be granted unconditional DELRAP authority after completing at least five (5) DELRAP reviews, or such lower number of DELRAP reviews as HUD may specify, to the satisfaction of HUD, and may then exercise DELRAP authority to approve projects in accordance with requirements of HUD.

(c) *Reviews.* HUD will monitor a mortgagee's performance in DELRAP on an ongoing basis.

(1) If the review shows that there are no material deficiencies, subsequent project approvals, denials, or recertifications may be selected for post-action review based on a percentage as determined by the Commissioner.

(2) If the review shows that there are material deficiencies in the mortgagee's DELRAP performance, the mortgagee may be returned to conditional DELRAP status.

(3) If additional reviews continue to show material deficiencies in the mortgagee's DELRAP performance, the mortgagee's authority to participate in DELRAP may be terminated or other action taken against the mortgagee or responsible staff reviewer.

(d) *Termination of DELRAP Authority.* (1) HUD may immediately terminate the mortgagee's authority to participate in DELRAP or take any action listed in 24 CFR 203.3(d) if:

(i) The mortgagee violates any of the requirements and procedures established by the Secretary for mortgagees approved to participate in DELRAP, the Direct Endorsement program, or the Title II Single Family mortgage insurance program; or

(ii) HUD determines that other good cause exists.

(2) Such termination will be effective upon the date of receipt of HUD's notice advising of the termination.

(3) Notwithstanding any provisions of this section, the Commissioner reserves the right to take administrative action, including revocation of DELRAP authority, against any mortgagee and staff reviewer because of unacceptable performance. Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under 24 CFR part 25.

(e) *Reinstatement.* A mortgagee whose DELRAP authority is terminated under this section may request reinstatement if the mortgagee's DELRAP authority has been terminated for at least 6 months. In addition to addressing the eligibility criteria specified in paragraph (b)(1) of this section, the application for reinstatement must be accompanied by a corrective action plan addressing the issues that led to the termination of the mortgagee's DELRAP authority, along with evidence that the mortgagee has implemented the corrective action plan. The Commissioner may grant conditional DELRAP authority if the mortgagee's application is complete and the Commissioner determines that the underlying causes for the termination have been satisfactorily remedied. The mortgagee will be required to complete successfully at least five DELRAP reviews in accordance with paragraph (b)(2) of this section in order to receive unconditional DELRAP authority as provided in paragraph (b)(3) of this section.

■ 3. In § 203.17, revise paragraph (a)(1) to read as follows:

§ 203.17 Mortgage provisions.

(a) * * *

(1) The term ''mortgage'' as used in this part, except § 203.43c, shall have the meaning given in Section 201 of the National Housing Act, as amended (12 U.S.C. 1707).

* * * * *

■ 4. Add § 203.43b to read as follows:

§ 203.43b Eligibility of mortgages on single-family condominium units.

(a) *Definitions.* As used in this part:

(1) *Condominium Association (Association)* means the organization, regardless of its formal legal name that consists of homeowners within a Condominium Project for the purpose of managing the financial and common-area assets.

(2) *Condominium Project* means the project in which one-family dwelling units are attached, semi-detached, detached, or manufactured housing units, and in which owners hold an undivided interest in the Common Elements.

(3) *Condominium Unit* means real estate consisting of a one-family dwelling unit in a Condominium Project.

(4) *Common Elements* means the Condominium Project's common areas and facilities including: Underlying land and buildings, driveways, parking areas, elevators, outside hallways, recreation and landscaped areas, and other elements described in the condominium declaration.

(5) *Rental for Transient or Hotel Purposes* shall have the meaning given in section 513(e) of the National Housing Act (12 U.S.C. 1731b(e)).

(6) *Single-Unit Approval* means approval of one unit in an unapproved Condominium Project under paragraph (i) of this section.

(7) *Site Condominium* means:

(i) A Condominium Project that consists entirely of single-family detached dwellings that have no shared garages or any other attached buildings; or

(ii) A Condominium Project that:

(A) Consists of single family detached or horizontally attached (townhouse) dwellings where the unit consists of the dwelling and land; and

(B) Is encumbered by a declaration of condominium covenants or condominium form of ownership and does not contain any manufactured housing units.

(b) *Eligibility.* A mortgage secured by a Condominium Unit shall be eligible for insurance under section 203 of the National Housing Act if it meets the requirements of this subpart, except as modified by this section.

(c) *Approval required.* To be eligible for insurance under this section, a Condominium Unit must be located in a Condominium Project approved by HUD or a DELRAP mortgagee approved under § 203.8, or meet the additional requirements for approval as a Site Condominium or Single-Unit Approval.

(d) *Condominium Project Approval: Eligibility Requirements.* To be eligible for Condominium Project approval, the Condominium Project must:

(1) Be primarily residential in nature and not be intended for rental for Transient or Hotel Purposes;

(2) Consist of units that are solely one-family units;

(3) Be in full compliance with all applicable Federal, State, and local laws

with respect to zoning, Fair Housing, and accessibility for persons with disabilities, including, but not limited to, the Fair Housing Act, 42 U.S.C. 3601 *et seq.,* Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.,* where relevant;

(4) Be complete and ready for occupancy, including completion of all the common elements of the project, and not subject to further rehabilitation, construction, phasing, or annexation, except to the extent that approval is sought for legal phasing in compliance with the requirements of paragraph (e) of this section;

(5) Be reviewed and approved by the local jurisdiction with respect to the condominium plat or similar development plan and any phases; if applicable, the approved plat or development plan must have been recorded in the land records of the jurisdiction; and

(6) Meet such further approval requirements as provided by the Commissioner through notices with respect to:

(i) Nature of title to realty or leasehold interests;

(ii) Control over, and organization of, the Condominium Association;

(iii) Minimum insurance coverage for the Condominium Project;

(iv) Planned or actual special assessments;

(v) Financial condition of the Condominium Project, including, but not limited to, the allowable percentage of units owned by a single owner or group of related owners;

(vi) Existence of any pending legal action, or physical property condition;

(vii) Acceptable maximum percentages of commercial/non-residential space, which must be within a range between 25 and 55 percent of the total floor area (which range may be changed following the procedures in paragraph (f) of this section), with the specific maximum and minimum percentages within that range to be established by HUD through notice, provided that such commercial/non-residential space does not negatively impact the residential use of the project or create adverse conditions to the occupants of individual condominium units.

(viii) Acceptable maximum percentages of units with FHA-insured mortgages, which must be within a range between 25 and 75 percent of the total number of units in the project (which range may be changed following the procedures in paragraph (f) of this section), with the specific maximum percentage of units with FHA-insured mortgages within that range to be established by HUD through notice. HUD may suspend the issuance of new FHA case numbers for a mortgage on a property located in any project where the number of FHA-insured mortgages exceeds the maximum insurance concentration established by HUD.

(ix) Acceptable minimum level of owner occupancy, which shall include units occupied as a principal or secondary residence or sold to an owner who intends to meet such occupancy requirements. Such acceptable minimum levels shall be within a range between 30 and 75 percent of the total number of units in the project (which range may be changed following the procedures in paragraph (f) of this section), with a specific minimum percentage to be established by HUD through notice. For the sole purpose of calculating the owner-occupancy percentage under this paragraph, any unit that is occupied by the owner as his or her place of abode for any portion of the calendar year other than as a principal residence and that is not rented for a majority of the calendar year shall count towards the total number of secondary residences.

(x) Reserve requirements, provided the reserve account is funded with at least 10 percent of the monthly unit assessments, unless a lower amount is deemed acceptable by HUD based on a reserve study completed not more than 36 months before a request for a lower amount is received, or such greater amount of time as determined by the Secretary under the HUD review and approval process.

(xi) Such other matters that may affect the viability or marketability of the project or its units.

(e) Phases of a project are approvable, provided that only legal phasing is used. Individual phases must be separately sustainable as required by HUD, so that the insurance fund is not put at undue risk. In determining whether to accept legal phasing, HUD will assess the potential risk to the insurance fund and other factors that HUD may publish in notices. Phases must meet HUD's requirements for approval in paragraph (d) of this section and must at a minimum be:

(1) In a vertical building, contiguous, with all units built out and having a certificate of occupancy; or

(2) In a detached or semi-detached development, where all homes in the phase are built out and have a certificate of occupancy;

(f) The Secretary will publish any generally applicable change in the upper and lower limits of the ranges of percentages in paragraphs (d)(6)(vii) through (ix) of this section in a notice published for 30 days of public comment. After considering the comments, the Department will publish a final notice announcing the new overall upper and lower limits of the range of percentages being implemented, and the date on which the new standard becomes effective.

(g) The Secretary may grant an exception to any specifically prescribed requirements within paragraph (d)(6) of this section on a case-by-case basis in HUD's discretion, provided that:

(1) In the case of an exception to the approval requirements for the commercial/nonresidential space percentage that HUD establishes under paragraph (d)(6)(vii) of this section, any request for such an exception and the determination of the disposition of such request may be made, at the option of the requester, under the Direct Endorsement Lender Review and Approval process or under the HUD review and approval process through the applicable field office of the Department; and

(2) In determining whether to allow such an exception, factors relating to the economy for the locality in which the project is located or specific to the project, including the total number of family units in the project, shall be considered. A DELRAP lender, in determining whether to grant a requested exception, shall follow any procedures that HUD may establish.

(h) *Application for Condominium Project approval and Renewal of Approval.* (1) In order to become approved, an application for Condominium Project approval, in accordance with the requirements of the Commissioner, must be submitted to either HUD or a DELRAP mortgagee, if consistent with the mortgagee's DELRAP approval.

(2) The application will be reviewed and if all eligibility criteria have been met, the Condominium Project will be approved and placed on the list of HUD-approved Condominium Projects.

(3) Unless otherwise specified in writing by HUD, Condominium Projects are approved for a period of 3 years from the date of placement on the list of approved condominiums. HUD may rescind a Condominium Project's approval at any time if the project fails to comply with any requirement for approval.

(4) Eligible parties may request renewal of the approval of an approved Condominium Project by submitting a request for recertification no earlier than 6 months prior to expiration of the approval or no later than 6 months after expiration of the approval. HUD shall

specify the format for the recertification request, which shall allow the request to be supported by updating previously submitted information, rather than resubmission of all information. However, if the request for recertification is not submitted within 6 months after the expiration of the Condominium Project's approval, a complete, new approval application is required.

(i) *Single-Unit Approval*—(1) *Single-Unit Approvals.* Mortgagees must ensure that the Condominium Unit is located in a Condominium Project that meets the eligibility requirements for approval as set forth in paragraph (d) of this section as modified by this paragraph, except that HUD may provide that Single-Unit Approvals may be approved by meeting a subset of these standards, or less stringent standards, as stated by notice. In addition, a unit may be eligible for Single-Unit Approval if it:

(i) Is not in a Condominium Project that is on the list of FHA-approved Condominium Projects; and

(ii) Is not in a project that has been identified by HUD as subject to adverse determination for significant issues that affect the viability of the project; and

(iii) Is in a project that is complete under paragraph (d)(4) of this section;

(iv) Is not a manufactured home; and

(v) Is in a project that has at least five (5) dwelling units.

(2) *Limit on Single-Unit Approvals.* HUD may suspend the issuance of new FHA case numbers for mortgages in Condominium Projects with Single-Unit Approvals where the number of FHA-insured mortgages exceeds the maximum insurance concentration established by HUD. Such acceptable maximum insurance concentration shall be within a range between 0 to 20 percent of units with FHA-insured mortgages for Condominium Projects with 10 or more units, with the exact percentage within that range to be determined by HUD through notice; or shall not exceed two FHA-insured mortgages for Condominium Projects with fewer than 10 units.

(j) *Site Condominium.* Site Condominiums must meet all of the requirements of paragraphs (d)(1) through (d)(5) of this section for approval, except that insurance and maintenance costs of the individual units must be the sole responsibility of the unit owner.

■ 5. In § 203.50, revise paragraphs (a)(1) and (f) to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(a) * * *

(1) The term *rehabilitation loan* means a loan, advance of credit, or purchase of an obligation representing a loan or advancement of credit, made for the purpose of financing:

(i) The rehabilitation of an existing one-to-four-unit structure which will be used primarily for residential purposes;

(ii) The rehabilitation of such a structure and refinancing of the outstanding indebtedness on such structure and the real property on which the structure is located;

(iii) The rehabilitation of such a structure and the purchase of the structure and the real property on which it is located; or

(iv) The rehabilitation of the interior space of a condominium unit, as defined in § 203.43b, excluding any areas that are the responsibility of the Association; and

* * * * *

(f) The loan may not exceed an amount which, when added to any outstanding indebtedness of the borrower that is secured by the property, creates an outstanding indebtedness in excess of the lesser of:

(1)(i) The limits prescribed in § 203.18(a)(1) and (3) (in the case of a dwelling to be occupied as a principal residence, as defined in § 203.18(f)(1));

(ii) The limits prescribed in § 203.18(a)(1) and (4) (in the case of a dwelling to be occupied as a secondary residence, as defined in § 203.18(f)(2));

(iii) Eighty-five (85) percent of the limits prescribed in § 203.18(c), or such higher limit, not to exceed the limits set forth in § 203.18(a)(1) and (3), as the Secretary may prescribe (in the case of an eligible non-occupant mortgagor as defined in § 203.18(f)(3));

(iv) The limits prescribed in § 203.18a, based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation;

(2) The limits prescribed in the authorities listed in this paragraph (f), based upon 110 percent of the Commissioner's estimate of the value of the property after rehabilitation; or

(3) For any Condominium Unit that is not a Site Condominium (as defined in § 203.43b), 100 percent of the after-improvement value of the Condominium Unit.

* * * * *

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

■ 6. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

■ 7. Revise § 206.51 to read as follows:

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located must be acceptable to the Commissioner as set forth in 24 CFR 203.43b.

■ 8. In § 206.131, revise paragraphs (c)(3) and (d) to read as follows:

§ 206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

* * * * *

(c) * * *

(3) To the condition of the property as of the date the assignment is filed for record. For units in projects with mortgages insured under 24 CFR part 234, § 234.275 of this chapter concerning the certification of condition applies.

(d) *Condition of the multifamily structure.* In projects with mortgages insured under 24 CFR part 234, the provisions of § 234.270(a) and (b) of this chapter concerning the condition of the multifamily structure in which the property is located shall be applicable to mortgages insured under this part which are assigned to the Commissioner.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

■ 9. The authority citation for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d).

Subpart A—Eligibility Requirements—Individually Owned Units

■ 10. Add § 234.2 to read as follows:

§ 234.2 Savings clause.

HUD's regulations at § 203.43b of this chapter govern approval of real estate consisting of a one-family unit in a multifamily project, and an undivided interest in the common areas and facilities which serve the project, except where the project has a blanket mortgage insured under section 234(d) of the National Housing Act, 12 U.S.C. 1715y(d) (section 234(d)). Where the project has a blanket mortgage insured by HUD under section 234(d), this 24 CFR part 234 applies to the approval of a one-family unit in such project.

Dated: August 6, 2019.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–17213 Filed 8–13–19; 8:45 am]

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FEDERAL REGISTER

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Part IV

The President

Notice of August 14, 2019—Continuation of the National Emergency With Respect to Export Control Regulations

Federal Register
Vol. 84, No. 158
Thursday, August 15, 2019

Presidential Documents

Title 3—

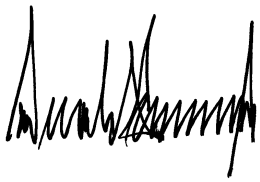
The President

Notice of August 14, 2019

Continuation of the National Emergency With Respect to Export Control Regulations

On August 17, 2001, the President issued Executive Order 13222 pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States related to the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 4601 *et seq.*). Because the implementation of certain sanctions authorities, including sections 11A, 11B, and 11C of the Export Administration Act, consistent with section 1766(b) of Public Law 115–232 (50 U.S.C. 4601 note), is to be carried out under the International Emergency Economic Powers Act the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222, as amended by Executive Order 13637 of March 8, 2013.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
August 14, 2019.

[FR Doc. 2019–17735
Filed 8–14–19; 11:15 am]
Billing code 3295–F9–P

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