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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 84 Friday,

No. 173 September 6, 2019

Pages 46875–47114

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

Docket No. FAA–2019–0403; Product Identifier 2019–NM–012–AD; Amendment 39–19723; AD 2019–17–03]

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 certain Airbus SAS Model A320–214 and –271N airplanes and Model A321–211 and –231 airplanes. This AD was prompted by a test of a new wall partition for a certain cabin attendant seat model that revealed the backrest was permanently deformed and did not allow the seat pan to return to a full-up position; investigation results identified that a heat treatment had not been applied on certain backframes. This AD requires modifying the affected cabin attendant seats, 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 October 11, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 11, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0403.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0403; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

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 Airbus SAS Model A320–214 and –271N airplanes and Model A321–211 and –231 airplanes. The NPRM published in the **Federal Register** on June 5, 2019 (84 FR 26027). The NPRM was prompted by a test of a new wall partition for a certain cabin attendant seat model that revealed the backrest was permanently deformed and did not allow the seat pan to return to a full-up position; investigation results identified that a heat treatment had not been applied on certain backframes. The NPRM proposed to require modifying the affected cabin attendant seats.

The FAA is issuing this AD to address a seat pan that does not return to a full-up position, which, if not corrected, could reduce the escape path through the adjacent exit door in case of evacuation, possibly resulting in injury to passengers or flightcrew.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0005, dated January 14, 2019 (''EASA AD 2019–0005'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–214 and –271N airplanes and Model A321–211 and –231 airplanes. The MCAI states:

> During a test of a new wall partition for cabin attendant seat model 2428, the backrest was found permanently deformed and did not allow the seat pan to return to a full-up position. Investigation results identified that a heat treatment had not been applied on certain backframes, which could lead to permanent deformation of the seat backrest.
>
> This condition, if not corrected, could reduce the escape path through the adjacent exit door in case of evacuation, possibly resulting in injury to aeroplane occupants.
>
> To address this potential unsafe condition, Airbus issued the applicable SB [service bulletin], which refers to Goodrich SB, providing instructions to modify affected parts by replacing the backframe, and to add a placard after modification.
>
> For the reasons described above, this [EASA] AD requires modification of the affected parts.

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–2019–0403.

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 2019–0005 describes procedures for modifying the affected cabin attendant seats (which includes an inspection to determine the part number and serial number of the cabin attendant seat) by replacing the backrest and adding a placard. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 19 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 462 work-hours × $85 per hour = $39,270	N/A	Up to $39,270	Up to $746,130.

* Table does not include estimated costs for reporting.

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 modification results on U.S. operators to be $85 per product.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the additional 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 our cost estimate.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this 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,

(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):

2019–17–03 Airbus SAS: Amendment 39–19723; Docket No. FAA–2019–0403; Product Identifier 2019–NM–012–AD.

(a) Effective Date

This AD is effective October 11, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A320–214 and –271N airplanes and Model A321–211 and –231 airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0005, dated January 14, 2019 (''EASA AD 2019–0005'').

(d) Subject

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

(e) Reason

This AD was prompted by a test of a new wall partition for a certain cabin attendant seat model that revealed the backrest was permanently deformed and did not allow the seat pan to return to a full-up position; investigation results identified that a heat

treatment had not been applied on certain backframes. The FAA is issuing this AD to address this condition, which, if not corrected, could reduce the escape path through the adjacent exit door in case of evacuation, possibly resulting in injury to passengers or flightcrew.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0005.

(h) Exceptions to EASA AD 2019–0005

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0005 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0005 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0005 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

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

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(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 2019–0005, dated January 14, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0005, 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 EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0005 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0403.

(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 August 22, 2019.

Suzanne Masterson,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–19099 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0390; Airspace Docket No. 19–ANM–9]

RIN 2120–AA66

Establishment of Class E Airspace; Lander, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Hunt Field, Lander, WY, to accommodate new area navigation (RNAV) procedures at the airport. This action is necessary for the safety and management of instrument flight rules (IFR) operations within the National Airspace System.

DATES: Effective 0901 UTC, December 5, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of FAA Order 7400.11C at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the earth at Hunt Field, Lander, WY, to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 28438; June 19, 2019) for Docket No. FAA–2019–0390 to establish Class E airspace extending upward from 700 feet above the surface at Hunt Field, Lander, WY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Hunt Field, Lander, WY, within a 7-mile radius of Hunt Field, Lander, WY, from the point that the 309° radial intersects the 7-mile radius clockwise to the point that the 140° radial intersects the 7-mile radius and that airspace 2 miles each side of the 50° radial from the 7-mile radius to 8.2 miles from the airport.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM WY E5 Lander, WY [New]

Hunt Field, WY
(Lat. 42°48′55″ N, long. 108°43′43″ W)

That airspace extending upward from 700′ above the surface of the earth within a 7-mile radius of Hunt Field, from the point that the 309° radial intersects the 7-mile radius clockwise to the point that the 140° radial intersects the 7-mile radius and that airspace 2 miles each side of the 50° radial from the 7-mile radius to 8.2 miles from the airport.

Issued in Seattle, Washington.

Byron Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–19249 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1229

[Docket No. CPSC–2015–0028]

Revisions to Safety Standard for Infant Bouncer Seats

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In September 2017, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant bouncer seats under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the ASTM voluntary standard that was in effect for infant bouncer seats at the time, with modified requirements for warning labels. ASTM has since revised the voluntary standard for infant bouncer seats. The CPSIA provides a process for when a voluntary standards organization updates a standard that the Commission incorporated by reference in a section 104 rule. Consistent with that process, this direct final rule revises the mandatory standard for infant bouncer seats to incorporate by reference the updated version of the ASTM standard.

DATES: The rule is effective on December 14, 2019, unless CPSC receives a significant adverse comment by October 7, 2019. If CPSC receives such a comment, it will publish a notice in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is

approved by the Director of the Federal Register as of December 14, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2015–0028, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments provided on the website. To ensure timely processing of comments, please submit all electronic comments through *www.regulations.gov,* rather than by email to CPSC.

Written Submissions: Submit written comments by mail, hand delivery, or courier to: Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments, without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, submit such information by mail, hand delivery, or courier.

Docket: For access to the docket to read background documents or comments, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2015–0028, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6820; email: *kwalker@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

Section 104 of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be ''substantially the same as'' the voluntary standard, or may be ''more stringent than'' the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Under this authority, the Commission adopted a mandatory rule for infant bouncer seats in 16 CFR part 1229. The rule incorporated by reference ASTM F2167–17, *Standard Consumer Safety Specification for Infant Bouncer Seats,* with more stringent requirements for the content and placement of warning labels. 82 FR 43470 (Sep. 18, 2017). At the time the Commission published the final rule, ASTM F2167–17 was the current version of the voluntary standard. ASTM has since revised the voluntary standard, adopting ASTM F2167–19.[1]

The CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference in a section 104 rule. First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the statute further provides that ''the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.'' 15 U.S.C. 2056a(b)(4)(B).

ASTM notified the Commission on June 17, 2019 that it had updated the infant bouncer seat standard. As this preamble discusses, the revised standard includes additional warning label content and placement requirements that are consistent with those in 16 CFR part 1229. Accordingly, the Commission is not determining that ''the proposed revision does not improve the safety of the consumer product'' and is not specifying a later effective date than that provided in the statute. Therefore, under the CPSIA, ASTM F2167–19 will become the mandatory standard for infant bouncer seats effective December 14, 2019, 180 days after CPSC received ASTM's notice.

B. Revised ASTM Standard

The ASTM standard for infant bouncer seats includes performance requirements and test methods, as well as requirements for warning labels and instructional literature, to address hazards to children associated with infant bouncer seats.

ASTM F2167–19 includes revised requirements for the content and visibility of on-product warning labels. It also includes editorial revisions that do not alter the substantive requirements or affect safety. As described below, the revisions in ASTM F2167–19 make the standard consistent with the more stringent requirements that the Commission included in 16 CFR part 1229. For this reason, the Commission concludes that the revised standard maintains the level of safety that the existing regulation provides. Because the Commission declines to determine that the revision ''does not improve the safety'' of infant bouncer seats, the revised ASTM standard will become the new CPSC standard.

The following are the revised portions of the ASTM standard, as well as a description of how they compare with the existing requirements in 16 CFR part 1229.

1. Visibility of Warning Labels

Section 7.11.3.1 in ASTM F2167–19 provides requirements for the visibility of warnings when an occupant is in the infant bouncer seat. It requires testers to place a CAMI dummy in the product, with restraints engaged, and verify whether the required warnings are unobscured by the dummy, and are visible above an imaginary horizontal line that crosses the torso of the dummy. The standard also provides a figure demonstrating this requirement. In addition, it includes a note stating that the warning placement requirement only applies to portions of the warning that are in English.

These requirements, and the accompanying figure, are consistent with the more stringent requirements that the Commission included in 16 CFR part 1229. The only difference is that 16 CFR part 1229 does not include the note that the visibility requirements only apply to the English portion of warning labels. CPSC staff is satisfied with this change because the warnings are only required to be in English (section 8.4.1).

Section 8.4.3 in the previous version of the standard, ASTM F2167–17, required that warnings be ''conspicuous and permanent''; ASTM F2167–19 adds to that requirement that warnings also ''comply with placement location where specified.'' Although 16 CFR part 1229 does not include this additional language, it is consistent with CPSC's regulation, which includes warning label visibility requirements.

[1] ASTM approved ASTM F2167–19 on May 1, 2019, and published it in June 2019.

2. Warning Label Content

Sections 8.5.1.1 and 8.5.2.1 in ASTM F2167–19 differ from the 2017 version of the ASTM standard by requiring an additional phrase in the warning statements that labels must address regarding fall hazards (8.5.1.1) and suffocation hazards (8.5.2.1). The previous standard, ASTM F2167–17, required as one part of these statements a warning to ''ALWAYS use restraints. Adjust to fit snugly.'' Under the revised standard, this portion of the warnings must indicate: ''ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep.'' This revised wording is the same as the wording that 16 CFR part 1229 requires.

3. Editorial Revisions

ASTM F2167–19 also includes editorial revisions that do not affect the substantive requirements in the standard, or safety. These changes are discussed below.

Section 1.7 states a precautionary caveat about the safety concerns the standard addresses. In the previous version of the statement, the caveat instructed users to ''establish appropriate safety and health practices''; ASTM F2167–19 revises this to instruct users to ''establish appropriate safety, health, and environmental practices.''

Section 8.4.6.2 of ASTM F2167–19 corrects a previously omitted word by adding ''preceded'' to the requirement that warning statements be preceded by bullet points.

Sections 8.5.3, 9.2.1, and 9.2.2 revise the figure numbers referenced because the addition of the warning placement figure described above resulted in renumbering other figures in the standard.

C. Direct Final Rule Process

In this notice, the Commission is updating the version of the ASTM standard incorporated by reference in 16 CFR part 1229 to reflect the revised standard that takes effect by operation of law under the CPSIA. The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, the APA provides an exception to this when an agency ''for good cause finds'' that notice and comment is ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b), (c).

When the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference into a rule under section 104 of the CPSIA, notice and the opportunity to comment is unnecessary. This is because, under the terms of the CPSIA, such an update automatically becomes CPSC's mandatory standard, unless the Commission takes action to prevent it. 15 U.S.C. 2056a(b)(4)(B). With respect to ASTM F2167–19, the Commission is not taking action to prevent it from becoming the new mandatory standard. Therefore, the revised ASTM standard will become CPSC's standard by operation of law. Moreover, the revised infant bouncer seats standard aligns with the Commission's existing mandatory standard, effectively maintaining the same requirements. Public comments would not influence the substantive changes to the standard or the effect of the revised standard under section 104 of the CPSIA. Therefore, notice and comment are unnecessary.

The purpose of this direct final rule is to update the edition of the standard the regulation references, so that it accurately reflects the standard in effect under the statute. The Administrative Conference of the United States (ACUS) recommends that agencies use direct final rulemaking when the ''unnecessary'' prong of the good cause exemption in the APA applies. 60 FR 43108, 43111 (Aug. 18, 1995). With a direct final rule, the rule takes effect on the stated effective date, unless the agency receives an adverse comment within a specified time. This allows the agency to expedite noncontroversial rules, while still allowing for public comment. *Id.* at 43111. A direct final rule is appropriate here because the Commission believes this rule is noncontroversial and will not elicit significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notice, the rule will become effective on December 14, 2019. Consistent with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change.'' *Id.* at 43111.

If the Commission receives a significant adverse comment, it will publish a notice withdrawing this direct final rule before the effective date. Depending on the comment and other relevant considerations, the Commission may address the adverse comment in a subsequent direct final rule, or publish a notice of proposed rulemaking, providing an opportunity for public comments.

D. Incorporation by Reference

Section 1229.2 of the direct final rule incorporates by reference ASTM F2167–19. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. These regulations require the preamble to a final rule to summarize the material and discuss the ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, *B. Revised ASTM Standard* of this preamble summarizes the major provisions of the ASTM F2167–19 standard that the Commission incorporates by reference into 16 CFR part 1229. Interested parties may obtain a copy of ASTM F2167–19 from ASTM, through its website (*http://www.astm.org*), or by mail from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. Alternatively, interested parties may inspect a copy of the standard at CPSC's Division of the Secretariat.

E. Certification

The Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) requires manufacturers of products that are subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the product complies with all applicable CPSC requirements. 15 U.S.C. 2063(a). For children's products, the manufacturer must base this certification on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. *Id.* 2063(a)(2). These testing and certification requirements apply to products for which the Commission issues rules under CPSIA section 104, because they are consumer product safety standards. *See id.* 2056a(b).

Because infant bouncer seats are children's products, a CPSC-accepted third party conformity assessment body must test samples of these products. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,[2] the phthalates prohibitions in section 108 of the CPSIA,[3] the tracking label requirements in section 14(a)(5) of the

[2] 15 U.S.C. 1278a.

[3] 15 U.S.C. 2057c.

CPSA,[4] and the consumer registration form requirements in section 104(d) of the CPSIA.[5]

F. Notice of Requirements

As discussed above, an accredited third party conformity assessment body must test children's products that are subject to a children's product safety rule for compliance with the applicable rule. 15 U.S.C. 2063(a)(2). The Commission must publish a notice of requirements (NOR) for third party conformity assessment bodies to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A).

As the CPSA requires, the Commission published an NOR for accreditation of third party conformity assessment bodies for testing infant bouncer seats. 15 U.S.C. 2063(a)(3)(B)(vi); 82 FR 43470 (Sep. 18, 2017). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant bouncer seats to 16 CFR part 1229. The NOR is listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies'' in 16 CFR part 1112.

The revised provisions regarding on-product warning labels in ASTM F2167–19 are consistent with the existing requirements in 16 CFR part 1229. Accordingly, the revisions do not create a significant change in the way that third party conformity assessment bodies test these products for compliance with the infant bouncer seats standard. Laboratories will begin testing to the new standard when ASTM F2167–19 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. Therefore, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies will need to update the scope of their accreditations to reflect the revised standard in the normal course of renewing their accreditations.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) requires agencies to consider the potential economic impact of a proposed and final rule on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies when an agency is required to publish notice of a rulemaking. *Id.* As discussed in *C. Direct Final Rules Process* of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule, and therefore, the Commission is not required to publish notice of this rulemaking because it falls under the good cause exception in the APA. *Id.* 553(b). Accordingly, the RFA does not apply to this rulemaking. Nevertheless, we note that this rule will have minimal economic impacts because it incorporates by reference a standard that is consistent with the existing mandatory requirements.

H. Paperwork Reduction Act

The current mandatory standard for infant bouncer seats includes requirements for labeling and instructional literature that constitute a ''collection of information,'' as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). The revised mandatory standard does not substantively alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1229, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.''

Pursuant to the CRA, OIRA designated this rule as not a ''major rule,'' as defined in 5 U.S.C. 804(2). In addition, to comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

J. Environmental Considerations

CPSC's regulations list categories of agency actions that ''normally have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c). Such actions qualify as ''categorical exclusions'' under the National Environmental Policy Act (42 U.S.C. 4321–4370m–12), which do not require an environmental assessment or environmental impact statement. One categorical exclusion listed in CPSC's regulations is for rules or safety standards that ''provide design or performance requirements for products.'' 16 CFR 1021.5(c)(1). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

K. Preemption

Under the CPSA, no state or political subdivision of a state may establish or continue in effect a requirement dealing with the same risk of injury as a Federal consumer product safety standard under the CPSA unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). However, states or political subdivisions of states may apply to CPSC for an exemption, allowing them to establish or continue such a requirement if the state requirement ''provides a significantly higher degree of protection from [the] risk of injury'' and ''does not unduly burden interstate commerce.'' *Id.* 2075(c).

Section 104 of the CPSIA refers to the rules issued under that section as ''consumer product safety standards,'' and states that a revised standard ''is considered a consumer product safety standard issued by the Commission under section 9'' of the CPSA. 15 U.S.C. 2056a(b)(1), (b)(4)(B). Accordingly, consumer product safety standards that the Commission creates or revises under CPSIA section 104 preempt state and local requirements in accordance with the preemption provisions in the CPSA.

L. Effective Date

When a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard under section 104 of the CPSIA, the revised standard automatically becomes the new mandatory standard effective 180 days after the Commission receives notification. 15 U.S.C. 2056a(b)(4)(B). The Commission may prevent this automatic effective date by either publishing notice of a later effective date, or rejecting the revision. *Id.* The Commission is taking neither of those actions with respect to the standard on infant bouncer seats. The Commission believes that the statutory effective date is reasonable because the revised standard is consistent with the existing mandatory standard. Therefore, ASTM F2167–19 automatically will take effect as the new mandatory standard on December 14, 2019, 180 days after the

[4] 15 U.S.C. 2063(a)(5).

[5] 15 U.S.C. 2056a(d).

Commission received notice of the revision on June 17, 2019.

As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this notice and publishes a notice withdrawing this rule by the effective date, the rule will become effective on December 14, 2019.

List of Subjects in 16 CFR Part 1229

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR part 1229 as follows:

PART 1229—SAFETY STANDARD FOR INFANT BOUNCER SEATS

■ 1. The authority citation for part 1229 continues to read as follows:

Authority: Sec. 104, Public Law 110–314, 122 Stat. 3016 (15 U.S.C. 2056a).

■ 2. Revise § 1229.2 to read as follows:

§ 1229.2 Requirements for infant bouncer seats.

Each infant bouncer seat must comply with all applicable provisions of ASTM F2167–19, *Standard Consumer Safety Specification for Infant Bouncer Seats,* approved May 1, 2019. 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 a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; *www.astm.org.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–19286 Filed 9–5–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Docket ID: USAF–2019–HQ–0006]

RIN 0701–AA89

Privacy Act Program

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Department of the Air Force Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, part 806b is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on September 6, 2019.

FOR FURTHER INFORMATION CONTACT: LaDonne White, 571–256–2515.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The Department of the Air Force program regulation at 32 CFR part 806b, ''Privacy Act Program,'' last updated on January 7, 2004 (69 FR 954), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publicly available on the Department's website. To the extent that the Department of the Air Force internal guidance concerning the implementation of the Privacy Act within the Department of the Air Force is necessary, it will continue to be published in ''Air Force Privacy and Civil Liberties Program (AFI33–332),'' available at *https://static.e-publishing.af.mil/production/1/saf_cio_a6/publication/afi33-332/afi33-332.pdf* (14 Feb 2019).

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department is eliminating the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

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

List of Subjects in 32 CFR Part 806b

Privacy.

PART 806b—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 806b is removed.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2019–19311 Filed 9–5–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0712]

Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel on all waters of the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the South Pulaski Road Bridge and the South Loomis Street Bridge in Chicago, Illinois on September 28, 2019. This action is necessary to protect spectators, participants, and vessels from the hazards associated with a crew regatta event. During the enforcement period listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7 a.m. through 3 p.m. on September 28, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, contact LT Tiziana Garner, Waterways Management Division, MSU Chicago,telephone 630–986–2155; email address *D09-SMB-MSUChicago-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone: Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the South Pulaski Road Bridge and the South Loomis Street Bridge in Chicago, Illinois, from 7 a.m. through 3 p.m. on September 28, 2019.

All vessels must obtain permission from the Captain of the Port, Lake Michigan, or a designated on-scene representative to enter, move within, or exit this safety zone during the enforcement times listed in this notice of enforcement. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan, or an on-scene representative.

This notice of enforcement is issued under authority 33 CFR 165.930 and 5 U.S.C 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners and Local Notice to Mariners. Additionally, the Captain of the Port Lake Michigan may notify representatives from the maritime industry through telephonic notifications, email notifications, or by direct communication from on scene patrol commanders. If the Captain of the Port or a designated representative determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, he or she may grant general permission to enter the regulated area via Broadcast Notice to Mariners. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (414) 747–7182.

Dated: September 3, 2019.

Thomas J. Stuhlreyer,

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

[FR Doc. 2019–19322 Filed 9–5–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0678]

RIN 1625–AA00

Safety Zone; Incline Village Wedding Fireworks Display, Crystal Bay, Incline Village, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Crystal Bay near the Hyatt Lake Tahoe Nevada boat dock in support of the Incline Village Wedding Fireworks Display on September 8, 2019. This safety zone is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 4 p.m. to 9:40 p.m. on September 8, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0678 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone (415) 399–3585, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port San Francisco
DHS Department of Homeland Security
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until July 30, 2019. It is impracticable to go through the entire notice of proposed rulemaking process because the Coast Guard must establish this temporary safety zone by September 8, 2019 and lacks sufficient time to provide a reasonable comment period and consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For similar reasons as stated above, notice and comment procedures would be impractical in this instance due to the short notice provided for this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the Incline Village Wedding Fireworks Display on September 8, 2019, will be a safety concern for anyone within a 100-foot radius of the fireworks barge during loading, staging, and transit, and anyone within a 210-foot radius of the fireworks barge starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks barge during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 4 p.m. until 9:40 p.m. on September 8, 2019 during the loading, staging, and transit of the fireworks barge in Crystal Bay in Incline Village, until 30 minutes after completion of the fireworks display. From 4 p.m. to 8:30 p.m. on September 8, 2019, during the loading, staging, and transit of the

fireworks barge until 30 minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks barge, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge. Loading the pyrotechnics onto the fireworks barge is scheduled from 4 p.m. to 5 p.m. on September 8, 2019, at the Incline Village boat ramp in Incline Village, NV.

The fireworks barge will remain at the Incline Village boat ramp until the start of its transit to the display location. Towing of the barge from the Incline Village boat ramp to the display location is scheduled to take place from 6 p.m. to 6:10 p.m. on September 8, 2019, where it will remain until the conclusion of the fireworks display.

At 8:30 p.m. on September 8, 2019, 30 minutes prior to the commencement of the 10-minute Incline Village Wedding Fireworks Display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge, from surface to bottom, within a circle formed by connecting all points 210 feet from the circle center at approximate position 39°14′00″ N, 119°56′56″ W (NAD 83). The safety zone will terminate at 9:40 p.m. on September 8, 2019.

This temporary safety zone restricts navigation in the vicinity of the fireworks loading, staging, transit, and firing site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone or assisting the COTP in the enforcement of the safety zone.

These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing sites to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, limited duration, and narrowly tailored geographic area of the safety zone. This safety zone impacts a 210-foot radius area of Lake Tahoe in Incline Village for a limited duration of 5 hours and 40 minutes. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 5 hours and 40 minutes that prevents entry to a 210-foot radius area of Lake Tahoe in Incline Village. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of Department of Homeland Security Directive 023–01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–993 to read as follows:

§ 165.T11–993 Safety Zone; Incline Village Wedding Fireworks Display, Crystal Bay, Incline Village, NV.

(a) *Location.* The following area is a safety zone: All navigable waters of Crystal Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during the loading and staging at the Incline Village boat ramp in Incline Village, as well as during transit and arrival to the display location in Incline Village, NV. Between 8:30 p.m. on September 8, 2019 and 9:40 p.m. on September 8, 2019, the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connecting all points 210 feet out from the fireworks barge in approximate position 39°14′00″ N, 119° 56′56″ W (NAD 83).

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart B of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 4 p.m. on September 8, 2019 through 9:40 p.m. on September 8, 2019.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with § 165.7.

Dated: August 28, 2019.

Marie B. Byrd,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2019–19252 Filed 9–5–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0755]

RIN 1625–AA00

Safety Zone; Les Cheneaux Islands, Cedarville, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for navigable waters within 50 yards of certain swim routes of a marine event in the Les Cheneaux Islands, in Cedarville, MI. The safety zones are needed to protect event participants from risks associated with the boating public near highly trafficked areas of the waterway. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sault Sainte Marie or his representative.

DATES: This rule is effective from 7:00 a.m. to 3:00 p.m. on September 8, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0755 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Sean Murphy, Waterways Management, Sector Sault Sainte Marie U.S. Coast Guard; telephone 906–635–3223, email *Sean.V.Murphy@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C.

553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details of the specific marine event and safety zone distance were not finalized within a sufficient time to allow for notice and a subsequent comment period before the commencement of the planned marine event. Delaying this rule to allow for a notice and comment period would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the swimmers participating in this swim event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because prompt action is needed to protect the swimmers participating in this event on September 8, 2019.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards associated with swimmers swimming between the Les Cheneaux Islands in a swim event will be a safety concern for anyone within 50 yards of certain swim routes through highly trafficked areas of the Les Cheneaux Islands. This rule is needed to protect event participants and support vessels during the event.

IV. Discussion of the Rule

This rule establishes safety zones from 7:00 a.m. until 3:00 p.m. on September 8, 2019. The duration of the zone is intended to protect event participants, support vessels, and the general boating public in these navigable waters during the marine event. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and location of the safety zones. Vessel traffic may request permission to transit the zone from the designated representative of the Captain of the Port, who may allow the vessel cross the Safety Zone when there is no risk to the event participants. The field of swimmers will not spread across the entirety of the waterway; thus, there will be opportunity for a designated representative of the Captain of the Port to allow vessels to transit the zones. 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 the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones that will prohibit entry within 50 yards of certain swim courses between the Les Cheneaux Islands. It is categorically excluded from further review under paragraph L[60(a)] in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0755 to read as follows:

§ 165.T09–0755 Safety Zones; Les Cheneaux Islands, Cedarville, MI.

(a) *Location.* The following area is a safety zone: All navigable waters within 50 yards of a line drawn between the following coordinates, based on NAD 83:

(1) 45° 58.481′ N, 084° 17.546′ W to 45°58.535′ N, 084° 18.102′ W.

(2) 45° 58.158′ N, 084° 18.319′ W to 45° 58.157′ N, 084° 18.595′ W.

(3) 45° 59.468′ N, 084° 19.826′ W to 45° 58.973′ N, 084° 19.807′ W.

(4) 45° 58.445′ N, 084° 21.792′ W to 45° 58.301′ N, 084° 22.003′ W.

(5) 45° 58.535′ N, 084° 22.480′ W to 45° 58.732′ N, 084° 22.591′ W to 45° 59.001′ N, 084° 22.914′ W to 45° 59.044′ N, 084° 22.792′ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zones.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, hail the COTP's representative on an appropriate VHF channel. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7:00 a.m. to 3:00 p.m. on September 8, 2019.

Dated: August 30, 2019.

P.S. Nelson,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2019–19256 Filed 9–5–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0332; FRL–9998–89–Region 7]

Approval of Iowa and Nebraska Air Quality Implementation Plans; Infrastructure SIP Requirements for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) submissions from Iowa Department of Natural Resources (IDNR) and Nebraska Department of Environmental Quality (NDEQ) for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). The Clean Air Act (CAA) requires that each state adopt and submit a SIP that provides for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, commonly referred to as ''infrastructure'' SIPs. In this action the EPA is taking final action to approve the interstate transportation obligations of the State's 2012 $PM_{2.5}$ NAAQS infrastructure SIP submittals.

DATES: This final rule is effective on October 7, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0332. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7214, email address *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

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I. What is being addressed in this document?
II. Have the requirements for approval of a SIP submission been met?
III. The EPA's Response to Comments
IV. What action is the EPA taking?
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

This final rulemaking approves certain elements of the infrastructure SIP submissions from Iowa received on December 22, 2015, and from Nebraska received on February 22, 2016. Specifically, the EPA is approving the following elements of section

110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQS (prong 2). The background for this action is discussed in detail in EPA's proposed rulemaking published in the **Federal Register** on June 26, 2019 (84 FR 30062).

II. Have the requirements for approval of a SIP submission been met?

The state's submissions have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The state of Iowa held a 30-day comment period, and a public hearing on November 16, 2015. No oral or written comments were received. The state of Nebraska held a public comment period from November 23, 2015, to December 29, 2015. The state received no comments during the public comment period. A public hearing was held on December 29, 2015. The submissions satisfied the completeness criteria of 40 CFR part 51, appendix V.

III. The EPA's Response to Comments

The public comment period on EPA's proposed rule opened June 26, 2019, the date of its publication in the **Federal Register** and closed on July 26, 2019. During this period, the EPA received no comments on the action.

IV. What action is the EPA taking?

The EPA is taking final action to approve the following elements of Iowa's December 22, 2015, and Nebraska's February 22, 2016, infrastructure SIP submissions: Section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQS (prong 2) as applicable to the 2012 Annual $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

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

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

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: August 26, 2019.

Edward Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—Q Iowa

■ 2. In § 52.820, the table in paragraph (e) is amended by adding entry ''(51)'' to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
* *	*	*	*	* *
(51) Section 110(a)(2) (D)(i)(I)—significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQs (prong 2) (Interstate Transport) Infrastructure Requirements for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) NAAQS.	Statewide	12/15/2015	9/6/2019, [insert **Federal Register** citation].	This action approves the following CAA elements: 110(a)(1) and 110(a)(2 (D)(i)(I)—prongs 1 and 2 [EPA–R07–OAR–2019–0332; FRL–9998–89–Region 7].

Subpart CC—Nebraska

■ 3. In § 52.1420, the table in paragraph (e) is amended by adding entry ''(36)'' to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*	*	*	* *
(36) Section 110(a)(2) (D)(i)(I)—significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQs (prong 2) (Interstate Transport) Infrastructure Requirements for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) NAAQS.	Statewide	2/22/2016	9/6/2019, [insert **Federal Register** citation].	This action approves the following CAA elements: 110(a)(1) and 110(a)(2 (D)(i)(I)—prongs 1 and 2 [EPA–R07–OAR–2019–0332; FRL–9998–89–Region 7].

[FR Doc. 2019–19071 Filed 9–5–19; 8:45 a.m.]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0700; FRL–9999–33–Region 5]

Air Plan Approval; Indiana; Regional Haze Plan and Prong 4 (Visibility) for the 2006 and 2012 $PM_{2.5}$, 2010 NO_2, 2010 SO_2, and 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking action under the Clean Air Act (CAA) on Indiana's November 27, 2017 State Implementation Plan (SIP) submittal addressing regional haze. This action is based on EPA's previous determination that a state's implementation of the Cross-State Air Pollution Rule (CSAPR) program continues to meet the criteria of the Regional Haze Rule (RHR) to qualify as an alternative to the application of Best Available Retrofit Technology (BART). EPA is taking several related actions. First, EPA is approving the portion of Indiana's November 27, 2017 SIP submittal seeking to change reliance from the Clean Air Interstate Rule (CAIR) to CSAPR for certain regional haze requirements. EPA is also converting EPA's limited approval/limited disapproval of Indiana's regional haze SIP to a full approval and withdrawing the Federal Implementation Plan (FIP) provisions that address the limited disapproval. Finally, EPA is approving the visibility prong (''prong 4'') of Indiana's infrastructure SIP submittals for the 2006 24-hour and 2012 annual fine particulate matter ($PM_{2.5}$), 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS) and converting EPA's disapproval of the visibility portion of Indiana's infrastructure SIP submittal for the 2008 ozone NAAQS to an approval.

DATES: This final rule is effective October 7, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0700. All documents in the docket are listed in the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *http://www.regulations.gov* or at the EPA Region 5 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for availability information).

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

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

I. Background
II. What comments did EPA receive on the proposed rule?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

On May 22, 2019 (84 FR 23504), EPA proposed to approve Indiana's November 27, 2017 SIP revision, including full approval of Indiana's Regional Haze SIP, the removal of the Regional Haze FIP, and the approval of prong 4 elements. The specific details of Indiana's November 27, 2017 SIP revision and the rationale for EPA's approval are discussed in the notice of proposed rulemaking and will not be restated here.

Indiana submitted infrastructure SIPs for the following NAAQS: 2006 24-hour $PM_{2.5}$ (October 20, 2009, June 25, 2012, July 12, 2012, and May 22, 2013); 2012 annual $PM_{2.5}$ (December 10, 2016); 2010 NO_2 (January 15, 2013); 2010 SO_2 (May 22, 2013); and 2008 ozone (December 12, 2011), which relied on the State having a fully approved regional haze SIP to satisfy its prong 4 requirements. However, EPA had not fully approved Indiana's regional haze SIP, as the Agency issued a limited disapproval of the State's original regional haze plan on June 7, 2012 (77 FR 33642), due to the plan's reliance on CAIR. EPA finalized a limited approval of Indiana's regional haze SIP on June 11, 2012 (77 FR 34218), as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR.

In the June 7, 2012 limited disapproval action, EPA also amended the RHR to provide that participation by a state's electric generating units (EGUs) in a CSAPR trading program for a given pollutant—either a CSAPR Federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision—qualifies as a BART alternative for those EGUs for that pollutant. On September 29, 2017 (82 FR 45481), EPA published a final rule affirming the continued validity of the Agency's 2012 determination that participation in CSAPR meets the RHR's criteria for an alternative to the application of source specific BART. On November 27, 2017, to correct the deficiencies in its regional haze SIP and obtain approval of the portions of the aforementioned infrastructure SIPs that rely on the regional haze SIP, Indiana submitted a SIP revision to replace reliance on CAIR with reliance on CSAPR.

In this final action, EPA is approving Indiana's November 27, 2017 regional haze SIP revision and converting EPA's previous limited approval/limited disapproval of Indiana's regional haze SIP to a full approval. Specifically, EPA finds that Indiana's November 27, 2017, SIP revision satisfies the SO_2 and NO_X BART requirements of the RHR for the BART-eligible sources in Indiana subject to the CSAPR annual NO_X, annual SO_2, and ozone season NO_X trading programs.[1] For reasons more fully explained in the proposal, and consistent with EPA's 2013 guidance on the prong 4 element of infrastructure SIPs,[2] with this approval of Indiana's regional haze SIP revision, the State's regional haze SIP is now fully approved and, therefore, provides the measures needed to ensure that its emissions do not interfere with any other state's efforts to protect visibility. Therefore, EPA is also approving the prong 4 portion of Indiana's 2006 24-hour $PM_{2.5}$ submissions, 2012 annual $PM_{2.5}$ submission, 2010 SO_2 submission, and 2010 NO_2 submission, as well as converting EPA's disapproval of the prong 4 portion of Indiana's 2008 ozone infrastructure submission (*see* 81 FR 53309), to an approval.

II. What comments did EPA receive on the proposed rule?

EPA provided a 30-day comment period for the May 22, 2019, proposed rule. During the comment period, we received one anonymous comment objecting to the proposed action. The adverse comment is summarized and addressed below.

Comment: EPA can't support finalizing action on infrastructure elements that are based on a FIP. CAA section 110(a)(2)(D) states that SIPs shall ''contain adequate provisions . . . .'' This language means that the requirements under section 110(a)(2)(D) must be contained in the SIP and can't be met by a FIP. EPA should disapprove Indiana's infrastructure SIP.

Response: The commenter's premise is incorrect in that the State of Indiana is meeting its prong 4 obligations through a fully approved regional haze SIP, not a FIP. The prong 4 infrastructure SIP element addressed in this action is contained in Section 110(a)(2)(D)(i)(II), which requires a state's implementation plan to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of the CAA. EPA issued guidance on infrastructure SIPs in a September 13, 2013 memorandum from Stephen D. Page, titled, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 Guidance). The 2013 Guidance lays out how a state's infrastructure SIP may satisfy prong 4. EPA explained that one way a state may satisfy prong 4 is via confirmation that the state has a fully approved regional haze SIP.

EPA's RHR, codified at 40 CFR 51.308 and 51.309, specifically requires that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility. The RHR further specifies that participation by a state's EGUs in a CSAPR trading program for a given pollutant—either a CSAPR Federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision—qualifies as a BART alternative for those EGUs for that pollutant. *See* 40 CFR 51.308(e)(4). Therefore, consistent with the RHR and the 2013 Guidance, a state's regional haze SIP can be fully approved if a state is meeting the BART requirement through the implementation of a CSAPR FIP. In this case, Indiana has replaced its former reliance on CAIR with a new SIP that relies on CSAPR to meet certain outstanding regional haze requirements. EPA is approving that SIP in this action and is withdrawing the FIP it had previously promulgated for Indiana to provide for reliance on CSAPR (*see* 77 FR 33654). Whether a state is subject to a CSAPR FIP or has replaced that FIP with a SIP to satisfy its obligations under prongs 1 and 2 of section 110(a)(2)(D)(i)(I) (together generally known as the ''good neighbor provision'') is not relevant to the question at hand regarding *prong 4* obligations. Indiana has appropriately adjusted its regional haze SIP to rely on CSAPR to meet certain regional haze

[1] On December 17, 2018 (83 FR 64472), EPA approved Indiana's regulations requiring large Indiana EGUs to participate in new CSAPR state trading programs for annual NO_X, annual SO_2, and ozone season NO_X emissions integrated with the CSAPR Federal trading programs and replaced the corresponding FIP requirements. Indiana's State trading program rules, 326 IAC 24–5 (Nitrogen Oxides (NO_X) Annual Trading Program), 326 IAC 24–6 (Nitrogen Oxides (NO_X) Ozone Season Group 2 Trading Program), and 326 IAC 24–7 (Sulfur Dioxide (SO_2) Group 1 Trading Program), are codified into the SIP at 40 CFR 52.770(c).

[2] September 13, 2013 memorandum from Stephen D. Page titled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''

obligations, and this is what allows EPA to fully approve the State's regional haze SIP. Having a fully approved regional haze SIP, as recognized in the 2013 Guidance, allows EPA to conclude that the State's prong 4 obligations are therefore also met.

Regardless, contrary to commenter's assertion, the State has in fact also already replaced its CSAPR FIP with a CSAPR SIP. On December 17, 2018, EPA approved Indiana's State CSAPR trading program regulations for annual NO_X, annual SO_2, and ozone season NO_X emissions to replace EPA's Federal CSAPR trading program regulations for these emissions from Indiana units (83 FR 64472). We found that Indiana's trading program is integrated with and is substantively identical to the Federal trading program. Therefore, EPA's full approval of Indiana's regional haze SIP, which provides the basis of EPA's approval of Indiana's prong 4 elements, relies on the State's integrated CSAPR state trading program, not a FIP as commenter asserts.

III. What action is EPA taking?

EPA is taking the following actions: (1) Approving the portion of Indiana's November 27, 2017 SIP submittal seeking to change from reliance on CAIR to reliance on CSAPR for certain regional haze requirements; (2) converting EPA's limited approval/limited disapproval of Indiana's January 14, 2011 and March 10, 2011 regional haze SIP to a full approval; (3) withdrawing the FIP provisions that address the limited disapproval; (4) approving the visibility prong of Indiana's infrastructure SIP submittals for the 2012 and 2006 $PM_{2.5}$, 2010 NO_2, and 2010 SO_2 NAAQS; and (5) converting EPA's disapproval of the visibility portion of Indiana's infrastructure SIP submittal for the 2008 ozone NAAQS to an approval.

IV. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

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

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

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

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.

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 does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. There are no Indian reservation lands in Indiana. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

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

L. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

M. Congressional Review Act

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

N. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 5, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: August 28, 2019.

Andrew R. Wheeler,

EPA Administrator.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770, the table in paragraph (e) is amended by revising the entries for ''Regional Haze Plan,'' ''Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS,'' ''Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS,'' ''Section 110(a)(2) Infrastructure Requirements for the 2010 NO_2 NAAQS,'' ''Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS,'' and ''Section 110(a)(2)(D) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	* *	*	* *
Regional Haze Plan	11/27/2017	9/6/2019, [Insert **Federal Register** citation].	Full Approval.
* *	* *	*	* *
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS.	10/20/2009, 6/25/2012, 7/12/2012, 5/22/2013, and 11/27/2017.	9/6/2019, [Insert **Federal Register** citation].	Full Approval.
* *	* *	*	* *
Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	12/12/2011 and 11/27/2017	9/6/2019, [Insert **Federal Register** citation].	Full Approval.
Section 110(a)(2) Infrastructure Requirements for the 2010 NO_2 NAAQS.	1/15/2013 and 11/27/2017	9/6/2019, [Insert **Federal Register** citation].	Full Approval.
Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS.	5/22/2013 and 11/27/2017	9/6/2019, [Insert **Federal Register** citation].	All elements have been addressed except: 110(a)(2)(D)(i)(I).
Section 110(a)(2)(D) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	6/10/2016 and 11/27/2017	9/6/2019, [Insert **Federal Register** citation].	All elements have been addressed except: 110(a)(2)(D)(i)(I).
* *	* *	*	* *

[FR Doc. 2019–19189 Filed 9–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA–R07–OAR–2019–0315; FRL–9998–90–Region 7]

Air Plan Approval; Missouri; Compliance Monitoring Usage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a Missouri State Implementation Plan (SIP) revision submission received on February 15, 2019. The submission revises a Missouri SIP approved regulation that establishes alternate monitoring methods for certifying compliance and alternate methods to establish whether a violation has occurred at a source. These revisions are administrative in nature and do not impact the stringency of the SIP or air quality. Approval of these revisions will ensure consistency between state and federally-approved rules. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 7, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0315. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7016; email address *casburn.tracey@epa.gov.*

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

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V. What action is the EPA taking?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

I. Background

On June 5, 2019, the EPA proposed approval of revisions to the Missouri SIP in the **Federal Register** that amend a SIP approved rule that establishes alternate monitoring methods for certifying compliance and alternate methods to establish whether a violation has occurred at a source. *See* 84 FR 26047. The EPA solicited comments on the proposed SIP revision and received one comment.

II. What is being addressed in this document?

The EPA is approving a revision to Missouri's SIP by approving the state's request to revise 10 CSR 10–6.280, *Compliance Monitoring Usage,* received February 15, 2019. The revisions are administrative in nature and do not impact air quality. Specifically, the revisions to the rule: Clarify that there are no definitions specific to the rule; add language clarifying the date of an incorporation by reference (IBR) and where the public can get a copy of the IBR; add a state rule to the list of state rules that presumptively identify credible testing, monitoring, or information gathering methods; and make other minor edits. A detailed discussion of the revision was provided in the EPA's June 5, 2019, **Federal Register** document and in a technical support document (TSD) that is available in the docket to this action. *See* 84 FR 26047.

III. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with code of Federal regulations (CFR) at 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided public notice of the revisions from June 15, 2018, to September 6, 2018, and held a public hearing on August 30, 2018. The state received one comment; the comment was from the EPA and was a general comment regarding SIP revisions. No changes were made to the proposed rule text in response to the EPA's comment. The SIP revision submission met the substantive requirements of the CAA, including section 110 and implementing regulations.

IV. What is the EPA's response to comment received?

Comment: The commenter stated that the EPA was incorrect when it identified 1 CFR part 51 as requiring the addition of the incorporation date and the location where copies can be found when including information by reference. The commenter interpreted 1 CFR part 51 as not applying to states incorporating federal rules and only applying to the federal government incorporating documents into the CFR. The commenter also asserted that by adding a date of incorporation, the State was limiting itself from the most recent version of the CFR. The commenter suggested that the EPA not approve the IBR revision unless it is able to determine what parts of 40 CFR part 64 could not be used if a revision to 40 CFR part 64 occurred after the state's IBR date of July 1, 2018.

Response: The EPA acknowledges that it could have been clearer in its TSD (in the docket to this notice) regarding the requirements to IBR. The EPA is now providing this additional information to clarify the IBR in this rulemaking. Chapter 536 of the Revised Statues of the State of Missouri (RSMo) states that ''[a]n agency may incorporate by reference rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state-recognized organization or association without publishing the material in full. The reference in the agency rules shall fully identify the incorporated material by publisher, address, and date in order to specify how a copy of the material may be obtained, and shall state that the referenced rule, regulation, standard, or guideline does not include any later amendments or additions''. Chapter 643 of RSMo requires the Missouri Air Conservation Commission to adopt regulations in accordance with Chapter 536 of the RSMo. Chapter 643 of the RSMo is incorporated by reference into the SIP at 40 CFR 52.1322(c)(69)(ii)(A). The previous version of this rule did not include a date of the referenced material, where the material could be obtained, or indicate that the reference did not include any later amendments or additions. By revising the rule to incorporate a date by reference, the Missouri Department of Natural Resources was coming into compliance with its own statute.

Additionally, 1 CFR part 51 requires the Agency to meet certain requirements to incorporate materials, such as state regulations, by reference into the SIP. These requirements include providing an effective date of the material being incorporated. The EPA previously incorporated 10 CSR 10–6.280 *Compliance Monitoring Usage* into the SIP in 2001 (66 FR 27028). This SIP revision updates that incorporation by reference to include the updated effective date. The state rule language limits the incorporated material to the 40 CFR part 64 rule language effective on July 1, 2018. July 1, 2018 is the annual publication date of the CFR. Citations to updates of the federal rule (rule updates are published in the **Federal Register**) are provided in the text of the CFR. The state will not include later amendments to 40 CFR part 64 without first going through the SIP revision process.

V. What action is the EPA taking?

We are taking final action to approve the revisions to 10 CSR 10–6.280 *Compliance Monitoring Usage* into the SIP.

VI. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

VII. Statutory and Executive Order Reviews

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

[1] 62 FR 27968 (May 22, 1997).

those imposed by state law. For that reason, this action:

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

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: August 26, 2019.

Edward Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA is amending 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—AA Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising entry for ''10–6.280'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6–Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.280	Compliance Monitoring Usage	2/28/2019	9/6/2019, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2019–19072 Filed 9–5–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 84, No. 173

Friday, September 6, 2019

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0592; Product Identifier 2019–NE–19–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all General Electric Company (GE) CF6–80C2A5F, –80C2B1F, –80C2B2F, –80C2B4F, –80C2B5F, –80C2B6F, –80C2B6FA, –80C2B7F, –80C2B8F, –80C2D1F, –80C2K1F, –80C2L1F, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B model turbofan engines with a certain hydromechanical unit (HMU) installed. This proposed AD was prompted by a report of fuel coking of the HMU fuel metering valve (FMV) electro-hydraulic servo valves (EHSV) resulting in tailpipe fire. This proposed AD would require removal of the HMU and replacement with a part eligible for installation. 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 October 21, 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 General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this referenced 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.

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–2019–0592; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations 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:

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–2019–0592; Product Identifier 2019–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 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 FAA received a report from GE of a tailpipe fire accompanied by engine rumble after airplane pushback and engine start. After further analysis, GE identified a buildup of fuel coking or fuel deposits in the HMU FMV EHSV components. This buildup can cause the EHSV shuttle valve to respond sluggishly or stick in a certain position. This condition, if not addressed, could result in failure of the HMU, engine fire, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE Service Bulletin (SB) CF6–80C2 SB 73–0436 R02, dated August 15, 2019, and GE SB CF6–80E1 SB 73–0142 R02, dated August 15, 2019. The SBs provide instructions, differentiated by the turbofan engine model, for repetitive overhauls of the HMU FMV EHSVs. 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 proposing 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.

Proposed AD Requirements

This proposed AD would require removal of the HMU and replacement with a part eligible for installation.

Costs of Compliance

The FAA estimates that this proposed AD affects 573 engines installed on 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	Cost on U.S. operators
Removal and replacement of HMU	5 work-hours × $85 per hour = $425	$0	$425	$243,525
Overhaul HMU FMV EHSV	5 work-hours × $85 per hour = $425	4,000	4,425	2,535,525

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):

General Electric Company: Docket No. FAA–2019–0592; Product Identifier 2019–NE–19–AD.

(a) Comments Due Date

The FAA must receive comments by October 21, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) CF6–80C2A5F, –80C2B1F, –80C2B2F, –80C2B4F, –80C2B5F, –80C2B6F, –80C2B6FA, –80C2B7F, –80C2B8F, –80C2D1F, –80C2K1F, –80C2L1F, –80E1A2, –80E1A3, –80E1A4, and –80E1A4/B model turbofan engines with a certain hydromechanical unit (HMU) part number (P/N) listed in paragraph 1.A., Table 1, of GE Service Bulletin (SB) CF6–80C2 SB 73–0436 R02, dated August 15, 2019; or paragraph 1.A., Table 1, of GE SB CF6–80E1 SB 73–0142 R02, dated August 15, 2019; installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7300, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by a report of fuel coking of the HMU fuel metering valve (FMV) electro-hydraulic servo valve (EHSV) resulting in tailpipe fire. The FAA is issuing this AD to prevent fuel coking or fuel deposits in the HMU FMV EHSV. The unsafe condition, if not addressed, could result in failure of the HMU, engine fire, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Remove the HMU and replace with a part eligible for installation before reaching 40,000 flight hours (FHs) since new or since the last overhaul, or within 180 days after the effective date of this AD, whichever is later. If the FHs since new or last overhaul are unknown and unable to be determined, replace the HMU with a part eligible for installation within 180 days after the effective date of this AD.

(2) Thereafter, remove the HMU before reaching 40,000 FHs since new or since the last overhaul and replace with a part eligible for installation.

(h) Definition

(1) For the purpose of this AD, a ''part eligible for installation'' is an HMU that has fewer than 40,000 FHs since new or fewer than 40,000 FHs since overhaul.

(2) For the purpose of this AD, an overhaul of the HMU is an overhaul of the HMU FMV EHSV in accordance with Accomplishment Instructions, paragraph 3.C.(3), of GE SB CF6–80C2 SB 73–0436 R02, dated August 15, 2019; paragraph 3.C.(3), of GE SB CF6–80E1 SB 73–0142 R02, dated August 15, 2019; or overhauled by other FAA approved methods.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact 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.*

(2) For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You

may view this referenced 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.

Issued in Burlington, Massachusetts, on August 30, 2019.

Karen M. Grant,

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

[FR Doc. 2019–19169 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0671; Product Identifier 2019–NM–080–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

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 The Boeing Company Model 787–8 airplanes. This proposed AD was prompted by a report of fatigue cracking in the lug root radius of a main landing gear (MLG) aft hanger link lug fitting. This proposed AD would require surface high frequency eddy current (HFEC) inspections of the left and right side MLG aft hanger link lug fitting for cracking, and applicable on-condition actions. 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 October 21, 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 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–2019–0671.

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–2019–0671; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations 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:

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–2019–0671; Product Identifier 2019–NM–080–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 proposed AD.

Discussion

The FAA has received a report indicating that fatigue cracking was found in the lug root radius of the left side MLG aft hanger link lug fitting during full scale fatigue testing. The cracking was found at 144,445 flight cycles and had a maximum length of 1.70 inches at the end of the test (165,000 flight cycles). Analysis completed during the investigation of the cracking indicates that similar cracks could develop on in-service aircraft. This condition, if not addressed, could result in undetected fatigue cracks that can grow and weaken the primary structure such that it cannot sustain limit load, which could adversely affect the structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB530070–00 RB, Issue 001, dated August 31, 2018. The service information describes procedures for repetitive HFEC inspections of the left and right side aft hanger link lug fitting at the lug root radius for cracking and applicable on-condition actions. On-condition actions include repair.

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 proposing 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.

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin B787–81205–SB530070–00 RB, Issue 001, dated August 31, 2018, described previously, except for any differences identified as exceptions in the regulatory text of this proposed 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–2019–0671.

Costs of Compliance

The FAA estimates that this proposed AD affects 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive HFEC inspections	3 work-hours × $85 per hour = $255 per inspection cycle.	$0	$255 per inspection cycle	$1,785 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 proposed AD.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. 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 proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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):

The Boeing Company: Docket No. FAA–2019–0671; Product Identifier 2019–NM–080–AD.

(a) Comments Due Date

The FAA must receive comments by October 21, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin B787–81205–SB530070–00 RB, Issue 001, dated August 31, 2018.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of fatigue cracking in the lug root radius of a main landing gear (MLG) aft hanger link lug fitting. The FAA is issuing this AD to address fatigue cracking in the left and right side MLG aft hanger link lug fittings. This condition, if not addressed, could result in undetected fatigue cracks that can grow and weaken the primary structure such that it cannot sustain limit load, which could adversely affect the structural integrity of the airplane.

(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 B787–81205–SB530070–00 RB, Issue 001, dated August 31, 2018, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB530070–00 RB, Issue 001, dated August 31, 2018.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB530070–00, Issue 001, dated August 31, 2018, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB530070–00 RB, Issue 001, dated August 31, 2018.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Requirements Bulletin B787–81205–SB530070–00 RB, Issue 001, dated August 31, 2018, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) 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 (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair,

modification, or alteration required by this AD if it is approved by The Boeing 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.

(j) Related Information

(1) 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.*

(2) 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.

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

Suzanne Masterson,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–19054 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0673; Product Identifier 2019–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2014–24–07, which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2014–24–07 requires repetitive rototest inspections for cracking; corrective actions if necessary; and modification of the torsion box, which terminates the repetitive inspections. Since the FAA issued AD 2014–24–07, the FAA has determined that the compliance times for the repetitive inspections must be revised for certain airplanes. This proposed AD would retain the actions of AD 2014–24–07, with certain revised compliance times, as specified in a European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. This proposed AD would also revise the applicability to include additional airplanes. 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 October 21, 2019.

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

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), 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.*

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–2019–0673; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Comments Invited

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–2019–0673; Product Identifier 2019–NM–101–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 based on those comments.

The FAA will post all comments, 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 NPRM.

Discussion

The FAA issued AD 2014–24–07, Amendment 39–18040 (79 FR 72124, December 5, 2014) (''AD 2014–24–07''), for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232 airplanes. AD 2014–24–07 requires repetitive rototest inspections for cracking; corrective actions if necessary; and modification of the torsion box, which terminates the repetitive inspections. AD 2014–24–07 resulted from a report of a crack found in the fuselage during a fatigue test campaign. The FAA issued AD 2014–24–07 to address cracking in the side box beam flange of the fuselage, which could affect the structural integrity of the airplane.

Actions Since AD 2014–24–07 Was Issued

Since the FAA issued AD 2014–24–07, the compliance times for the repetitive inspections have been reduced for airplanes with a retrofit sharklet installation with non-structural reinforcement.

The EASA, which is the Technical Agent for the Member States of the

European Union, has issued EASA AD 2019–0122, dated June 4, 2019 (''EASA AD 2019–0122'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

During the full scale fatigue test campaign of the A320 family type design, a crack was reported in the fuselage side box beam flange at frame (FR) 43 level, both sides.

This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.

To address this potential unsafe condition, Airbus issued SB [service bulletin] A320–53–1258, providing instructions for repetitive inspections, and SB A320–53–1251, later revised, providing modification instructions.

Consequently, EASA issued AD 2013–0261 [which corresponds to FAA AD 2014–24–07], requiring repetitive inspections and, depending on findings, accomplishment of corrective action(s). That [EASA] AD also required a modification, which constitutes terminating action for the required repetitive inspections.

Since that [EASA] AD was issued, Airbus issued SB A320–57–1193 (retrofit mod 160080) to allow retrofit sharklet installation on A320 and A319 aeroplanes with non-structural reinforcement, and revised SB A320–53–1258, including new affected aeroplane configuration and applicable accomplishment timescale.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013–0261, which is superseded, but requires accomplishment of repetitive inspections and, depending on findings, corrective action(s), at different accomplishment timescale, depending on aeroplane configuration. This [EASA] AD also requires a modification, which constitutes terminating action for the repetitive inspections.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2014–24–07, this proposed AD would retain all of the requirements of AD 2014–24–07. Those requirements are referenced in EASA AD 2019–0122, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0122 describes procedures for repetitive rototest inspections for cracking; corrective actions if necessary; and modification of the torsion box, which would terminate the repetitive inspections.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0122 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Model A320–216 Airplanes

The Airbus SAS Model A320–216 was U.S. type certificated on December 19, 2016. Before that date, any EASA ADs that affected Model A320–216 airplanes were included in the U.S. type certificate as part of the Required Airworthiness Actions List (RAAL). One or more Model A320–216 airplanes have subsequently been placed on the U.S. Register, and will now be included in FAA AD actions. For Model A320–216 airplanes, the requirements that correspond to AD 2014–24–07 were mandated by the MCAI via the RAAL. Although that RAAL requirement is still in effect, for continuity and clarity the agency has identified Model A320–216 airplanes in paragraph (c) of this AD; the restated requirements of this proposed AD would therefore apply to those airplanes.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0122 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019–0122, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0122 that is required for compliance with EASA AD 2019–0122 will be available on the internet *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0673 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 851 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2014–24–07	178 work-hours × $85 per hour = $15,130	$31,334	$46,464	$39,540,864

The new requirements of this proposed AD add no new economic burden.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this proposed 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 proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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 removing Airworthiness Directive (AD) 2014–24–07, Amendment 39–18040 (79 FR 72124, December 5, 2014), and adding the following new AD:

Airbus SAS: Docket No. FAA–2019–0673; Product Identifier 2019–NM–101–AD.

(a) Comments Due Date

The FAA must receive comments by October 21, 2019.

(b) Affected ADs

This AD replaces AD 2014–24–07, Amendment 39–18040 (79 FR 72124, December 5, 2014) (''AD 2014–24–07'').

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0122, dated June 4, 2019 (''EASA AD 2019–0122'').

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a report of a crack found in the side box beam flange of the fuselage at the frame (FR) 43 level during a fatigue test campaign. The FAA is issuing this AD to address cracking in the side box beam flange of the fuselage, which could affect the 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 2019–0122.

(h) Exceptions to EASA AD 2019–0122

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0122 refers to its effective date, this AD requires using the effective date of this AD. However, where Table 1 of EASA AD 2019–0122 provides compliance times for group 1B airplanes as ''[w]ithin 3,000 FC or 6,000 FH'' after a given date, this AD requires that those compliance times be calculated 3,000 flight cycles or 6,000 flight hours, ''whichever occurs first'' after January 9, 2015 (the effective date of AD 2014–24–07).

(2) The ''Remarks'' section of EASA AD 2019–0122 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0122 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0122, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For

information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0122 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0673.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

Issued in Des Moines, Washington, on August 22, 2019.

Suzanne Masterson,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–19010 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0663; Product Identifier 2018–SW–057–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

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 Sikorsky Aircraft Corporation (Sikorsky) Model S–70, S–70A, S–70C, S–70C(M), and S–70C(M1) helicopters. This proposed AD was prompted by four incidents of disbonding between the tail rotor (T/R) blade pitch horn and the torque tube. This proposed AD would require recurring visual and tap inspections of the T/R blade, and depending on the outcome, replacing the T/R blade. 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 October 21, 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 your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or (203) 416–4299; email *wcs_cust_service_eng.gr-sik@lmco.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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–2019–0663; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kristopher Greer, Aviation Safety Engineer, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, MA 01803; telephone (781) 238–7799; email *kristopher.greer@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–2019–0663; Product Identifier 2018–SW–057–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 the FAA 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 FAA receives about this NPRM.

Discussion

The FAA proposes to adopt a new AD for Sikorsky Model S–70, S–70A, S–70C, S–70C(M), and S–70C(M1) helicopters with T/R blade part number 70101–31000 (all dash numbers) and with a serial number up to and including A009–08915.

This proposed AD is prompted by four incidents of disbonding between the T/R blade pitch horn and the torque tube on Model UH–60L and SH–60F helicopters. The disbonding produced minor to severe vibrations due to the mass imbalance. This condition may also occur on Sikorsky Model S–70, S–70A, S–70C, S–70C(M), and S–70C(M1) helicopters due to design similarity.

Disbonding between the T/R blade pitch horn and the torque tube, if not addressed, could result in the T/R blade pitch horn rocking in the torque tube, leading to increased T/R vibrations. These vibrations could lead to crushing of the torque tube and subsequent loss of control of the helicopter. While Sikorsky continues to test T/R blades returned from the field, investigation has revealed blades produced prior to manufacturing improvements implemented between 2006 and 2007 are prone to this disbonding. To address this condition, Sikorsky is assessing design change options to retrofit the affected T/R blades.

Related Service Information

The FAA reviewed Sikorsky Aircraft Model S–70 Blackhawk Derivatives Maintenance Manual Temporary Revision No. 72, dated October 12, 2017. This service information specifies replacing a 10-hour/14-day T/R inspection with a before first flight of the day T/R inspection.

The FAA also reviewed section 5–3–13.2 Coin-Tapping Inspection Method of Sikorsky Technical Manual TM 1–70–23–3, Change 12, dated July 1, 2018. This service information specifies procedures for coin-tap inspecting T/R blades. This service information also specifies general repair limits and includes figures illustrating the different types of materials of the T/R blade skin and core regions.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require, before the first flight of each day,

visually inspecting each T/R blade for any crack, leading edge erosion, and trailing edge skin disbonding and separation, paying particular attention to the area from the midspan to the pitch control horn; and tap inspecting for disbonding in the pitch horn to torque tube bond area. Depending on the outcome of these inspections, this proposed AD would require replacing the T/R blade.

Interim Action

The FAA considers this proposed AD interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this proposed AD affects 13 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Inspecting the T/R blades would take about 1 work-hour for an estimated cost of $85 per helicopter and $1,105 for the U.S. fleet, per inspection cycle. Replacing a set of two T/R blades would take about 6 work-hours and parts would cost about $192,304 for an estimated cost of $192,814 per helicopter.

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.

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):

Sikorsky Aircraft Corporation: Docket No. FAA–2019–0663; Product Identifier 2018–SW–057–AD.

(a) Comments Due Date

The FAA must receive comments by October 21, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Model S–70, S–70A, S–70C, S–70C(M), and S–70C(M1) helicopters, certificated in any category, with a tail rotor (T/R) blade part number 70101–31000 (all dash numbers) with a serial number (S/N) up to and including A009–08915.

Note 1 to paragraph (c) of this AD: Each T/R blade is marked with the S/N.

(d) Subject

Joint Aircraft System Component (JASC): 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by four incidents of disbonding between the T/R blade pitch horn and the torque tube. The FAA is issuing this AD to detect disbonding. The unsafe condition, if not addressed, could result in increased T/R vibrations, physical failure of the torque tube, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) T/R Blade Inspection

Before the first flight of each day:

(1) Visually inspect each T/R blade for a crack, leading edge erosion, and trailing edge skin disbonding and separation, paying particular attention to the area from the midspan to the pitch control horn. If there is a crack, any leading edge erosion, trailing edge disbonding, or trailing edge separation, before further flight, replace the T/R blade with an airworthy part.

(2) Tap test inspect each T/R blade for disbonding in the pitch horn to torque tube bond area. If there is any disbonding, before further flight, replace the T/R blade with an airworthy part.

(h) 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 certification office, send it to the attention of the person identified in paragraph (i)(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.

(i) Related Information

(1) For more information about this AD, contact Kristopher Greer, Aviation Safety Engineer, Boston ACO Branch, Compliance & Airworthiness Division, FAA, 1200 District Avenue, Burlington, MA 01803; telephone (781) 238–7799; email *kristopher.greer@faa.gov.*

(2) For service information identified in this AD, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or (203) 416–4299; email *wcs_govt_field_serv_eng.gr-sik@lmco.com.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued in Fort Worth, Texas, on August 23, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–19104 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0677; Airspace Docket No. 19–ACE–5]

RIN 2120–AA66

Proposed Revocation of VHF Omnidirectional Range (VOR) Federal Airway V–61 and Amendment of Area Navigation Route T–286 Due to the Decommissioning of the Robinson, KS, VOR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove VHF Omnidirectional Range (VOR) Federal airway V–61 in its entirety and extend area navigation (RNAV) route T–286 in its place. The FAA is proposing this action due to the planned decommissioning of the Robinson, KS (RBA), VOR portion of the Robinson VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID). The Robinson VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before October 21, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0677; Airspace Docket No. 19–ACE–5 at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2019–0677; Airspace Docket No. 19–ACE–5) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2019–0677; Airspace Docket No. 19–ACE–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

Background

The FAA is planning to decommission the VOR portion of the Robinson, KS (RBA), VOR/DME in March 2020. The Robinson VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

With the planned decommissioning of the Robinson VOR, two of the three V–61 route segments are impacted and the remaining ground-based NAVAID

coverage in the area is insufficient to enable the continuity of V–61 as charted. As such, the FAA proposes to remove V–61 in its entirety between the Grand Island, NE, VOR/Distance Measuring Equipment (VOR/DME) NAVAID and the intersection of the Robinson, KS, VOR/DME 141° and St. Joseph, MO, VOR Tactical Air Navigation (VORTAC) 211° radials (the BOWLR fix).

To overcome the gap that would result in the en route structure by the removal of V–61, the FAA proposes to extend T–286 between the Grand Island VOR/DME and BOWLR fix to overlay the V–61 routing being removed. Additionally, adjacent VOR Federal airways V–4, V–50, V–71, V–77, V–138, V–307, V–380, and V–551 between the St. Joseph, MO, VORTAC and Topeka, KS, VORTAC areas and the Grand Island, NE, VOR/DME remain available to circumnavigate the affected area. Further, the fixes located along V–61 would be retained in place to assist pilots and air traffic controllers already familiar with them for navigation purposes. Instrument flight rules (IFR) traffic could use the extended T–286, use the adjacent VOR Federal airways, file point-to-point through the affected area using the fixes that will remain in place, or receive air traffic control (ATC) radar vectors through the area. Lastly, the Robinson DME facility is planned to be retained and charted in its current location as a DME facility with the ''RBA'' identifier. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the air traffic services previously listed.

A number of minor editorial corrections to the T–286 legal description are also proposed to correct erroneous information and comply with route description policy guidance. The editorial corrections do not change the route's structure, operational use, or charted depiction.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to remove VOR Federal airway V–61 and extend RNAV route T–286 to overlay the V–61 routing being removed. The planned decommissioning of the VOR portion of the Robinson, KS, VOR/DME has made this action necessary. The proposed air traffic service (ATS) route actions are described below.

V–61: V–61 currently extends between the Grand Island, NE, VOR/DME and the intersection of the Robinson, KS, VOR/DME 141° and St. Joseph, MO, VOR Tactical Air Navigation (VORTAC) 211° radials (BOWLR fix). The FAA proposes to remove the airway in its entirety.

T–286: T–286 currently extends between the Rapid City, SD, VORTAC and the Grand Island, NE, VOR/DME. The FAA proposes to extend the route southeast between the Grand Island VOR/DME and the BOWLR fix. Additionally, the Rapid City VORTAC ''RAP'' identifier is added to the first line of the route description; the type of fix for EFFEX and the type of facility for Grand Island, NE, are corrected; and the geographic coordinates of each route point are updated to be expressed in degrees, minutes, seconds, and hundredths of a second.

VOR Federal airways are published in paragraph 6010(a) and low altitude RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be subsequently published in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–61 [Removed]

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–286 Rapid City, SD (RAP) to BOWLR, KS [Amended]

Rapid City, SD (RAP)	VORTAC	(Lat. 43°58′33.74″ N, long. 103°00′44.38″ W)
Gordon, NE (GRN)	NDB	(Lat. 42°48′03.90″ N, long. 102°10′45.82″ W)
EFFEX, NE	FIX	(Lat. 42°19′59.17″ N, long. 101°20′11.41″ W)
Thedford, NE (TDD)	VOR/DME	(Lat. 41°58′53.99″ N, long. 100°43′08.52″ W)
BOKKI, NE	FIX	(Lat. 41°39′54.99″ N, long. 99°52′17.00″ W)
Grand Island, NE (GRI)	VOR/DME	(Lat. 40°59′02.50″ N, long. 98°18′53.20″ W)
Pawnee City, NE (PWE)	VORTAC	(Lat. 40°12′01.27″ N, long. 96°12′22.61″ W)
Robinson, KS (RBA)	DME	(Lat. 39°51′03.00″ N, long. 95°25′23.00″ W)
BOWLR, KS	FIX	(Lat. 39°37′21.29″ N, long. 95°11′00.26″ W)

* * * * *

Issued in Washington, DC, on August 28, 2019.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–19112 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AC62

IMARA Calculation Under the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule to implement technical changes to program regulations that address the calculation and notification to the public of the Terrorism Risk Insurance Program's (Program) insurance marketplace aggregate retention amount (IMARA) under the Terrorism Risk Insurance Act (Act), as amended.

DATES: Written comments must be submitted on or before October 7, 2019. Early submissions are encouraged.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal, *http://www.regulations.gov,* or by mail (if hard copy, preferably an original and two copies) to the Federal Insurance Office, Attention: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''IMARA Calculation Proposed Rule Comments.'' Please include your name, group affiliation, address, email address, and telephone number in your comment.

In general, received comments will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Received comments, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–2922 or Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, 202–622–3220.

SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002 (as amended, the Act or TRIA) [1] was enacted on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events.[2] TRIA requires insurers to ''make available'' terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. The Program has been reauthorized three times, most recently by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (the 2015 Reauthorization Act).[3]

The Secretary of the Treasury (Secretary) administers the Program. The Federal Insurance Office (FIO) assists the Secretary in administering the Program.[4] To assist insurers, policyholders, and other interested parties in complying with the applicable requirements of the Act, Treasury has issued regulations implementing the Program. In some instances, Treasury has also issued interim guidance to be relied upon by insurers until superseded by any regulations.[5] Most recently, Treasury issued regulations implementing the changes to the Program required under the 2015 Reauthorization Act.[6]

The Act established an industry marketplace aggregate retention amount (IMARA) as a threshold figure to determine whether any Treasury payments under the Program are subject to mandatory recoupment. Under the Act, if total annual payments by participating insurers are below the IMARA, Treasury must recoup all expended amounts up to the IMARA threshold (mandatory recoupment). If total annual payments by participating insurers are above the IMARA, Treasury has the discretion to recoup all expended amounts above the IMARA threshold (discretionary recoupment).[7]

The 2015 Reauthorization Act established an IMARA of $29.5 billion beginning in calendar year 2015, and provided for an annual $2 billion increase in the IMARA until the IMARA reached $37.5 billion in calendar year 2019.[8] Once the $37.5 billion figure was reached in 2019, the 2015 Reauthorization Act provided that the IMARA ''shall be revised to be the amount equal to the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years,'' as such sum is determined by the Secretary.[9] An insurer's deductible under the Program for any particular year is 20 percent of its direct earned premium subject to the Program during the preceding year.[10] For example, an insurer's calendar year 2019 Program deductible is 20 percent of its calendar year 2018 direct earned premium.

The 2015 Reauthorization Act required the Secretary to issue a final rule for determining how subsequent IMARA amounts would be calculated and providing a timeline for public notification of the amount each year.[11]

The 2015 Reauthorization Act also required that Treasury collect data from participating insurers related to the effectiveness of the Program.[12] Accordingly, Treasury stated in the preamble to the 2016 NPRM that it would calculate the IMARA beginning in calendar year 2020 based upon the data that it would be collecting:

> The approach follows the direction in the 2015 Reauthorization Act that the insurance marketplace aggregate retention amount for any calendar year after the Program Trigger reaches $37.5 billion should be based upon the average of insurer deductibles during the three prior calendar years. It calculates this

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701 note. Because the provisions of TRIA (as amended) appear in a note instead of particular sections of the U.S. Code, the provisions of TRIA are identified by the sections of the law.

[2] TRIA, sec. 101(b).

[3] See Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, 119 Stat. 2660; Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839; Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114–1, 129 Stat. 3.

[4] 31 U.S.C. 313(c)(1)(D).

[5] Treasury summarized the history of prior rulemakings in connection with the Program in its last notice of proposed rulemaking proposing rule changes to implement the 2015 Reauthorization Act. See 81 FR 18950 (April 1, 2016) (2016 NPRM).

[6] See 81 FR 88592 (December 7, 2016) (Certification Interim Final Rule); 81 FR 93756 (December 21, 2016) (Program Final Rules Except Certification).

[7] See TRIA, sec. 103(e)(7); see also 31 CFR part 50 subpart J (Recoupment and Surcharge Procedures).

[8] TRIA, sec. 103(e)(6)(A).

[9] TRIA, sec. 103(e)(6)(B)(ii).

[10] TRIA, sec. 102(7).

[11] TRIA, sec. 103(e)(6)(C).

[12] TRIA, sec. 104(h).

figure by reference to the data that Treasury will be collecting concerning insurer participation in the Program under proposed § 50.51.[13]

In any year, Treasury collects data for the prior year. For example, in 2019, Treasury collected calendar year 2018 data, which is used to determine 2019 insurer deductibles. Therefore, to calculate the IMARA for 2020, Treasury calculates the average deductibles for the three prior years (2019, 2018, and 2017), which are based on the direct earned premiums reported in those years for the prior calendar years (2018, 2017, and 2016, respectively).

Although the preamble to the 2016 NPRM correctly explained the methodology for calculating the IMARA in 2020 and beyond, as required by the 2015 Reauthorization Act, the language in the Program rules is ambiguous as to how the IMARA should be calculated. Under § 50.4(m)(2)(i) of the Program rules, the IMARA calculation is to be based on the ''direct earned premium reported by insurers to Treasury . . . *for* the three calendar years prior to the calendar year in question'' (emphasis added.)[14] This language could be interpreted to mean, for example, that the 2020 IMARA would be calculated using direct earned premiums in 2019, 2018, and 2017, rather than using the data reported in 2019, 2018, and 2017 for calendar years 2018, 2017, and 2016, as intended. This unintended interpretation would be inconsistent with the methodology specified in the 2015 Reauthorization Act and would result in an incorrect IMARA.

II. The Proposed Rule

A. Overview

Treasury is proposing a technical correction to 31 CFR 50.4(m)(2)(i) to clarify that the IMARA calculation is based upon direct earned premium reported ''*in*'' the three calendar years prior to the calendar year in question, instead of ''*for*'' the three calendar years prior to the calendar year in question. For example, this would result in a proper calculation of the 2020 IMARA by referring to the insurer deductibles for the previous three years (2019, 2018, and 2017), which are based on reported data for calendar years 2018, 2017, and 2016.

In addition, Treasury is proposing to modify 31 CFR 50.4(m)(3) to accelerate the notification date of the IMARA, in an effort to improve administrative efficiency. The Program rules provide that, for any year, Treasury will publish the notification of the IMARA in the **Federal Register** by April 30 of that year. (The Program rules also state that if an event is certified as an act of terrorism by the Secretary before any April 30, Treasury will publish notice of the IMARA ''as soon as practicable thereafter.''[15]) The proposed rule change described above, which directs use of data reported ''in'' as opposed to ''for'' the prior three years, will provide Treasury with additional time to make the IMARA calculation by reference to data reported in the prior three years.

This notice of proposed rulemaking therefore proposes to change the IMARA notification requirement such that, for any year, Treasury will publish the IMARA no later than December 31 of the prior year. This change will notify participating insurers of the new IMARA figure in advance of the IMARA taking effect (rather than during the year the IMARA is already in effect). The change will also provide Treasury with time to assess and respond to any late reported or corrected data in the last year. This will also alert participating insurers of potential changes in their obligations under the Program before the IMARA takes effect. Additionally, this change promotes efficient operation of the Program by the Federal Insurance Office.

As noted above, the Program rules also address situations where an act of terrorism is certified before the establishment of that year's IMARA. Because the IMARA under the proposed rule would be calculated and announced before the year begins, this provision would no be longer necessary and would be eliminated from the regulations.

Treasury seeks comment on all aspects of the proposed rule changes from interested persons and entities.

B. Description of the Proposed Rule

Treasury proposes the following changes:

(1) In existing 31 CFR 50.4(m)(2)(i), change the word ''for'' to ''in,'' so that this subsection refers to amounts reported ''*in* the three calendar years prior to the calendar year in question'';

(2) In existing 31 CFR 50.4(m)(3), change the annual deadline for Treasury to publish the IMARA from April 30 of the year in question to December 31 of the prior year; and

(3) Eliminate current language in 31 CFR 50.4(m)(3) addressing the timing for publication of the IMARA in situations where the Secretary certifies an act of terrorism prior to April 30 of any year.

III. Procedural Requirements

Executive Order 12866, ''*Regulatory Planning and Review.*'' This rule is not a significant regulatory action for purposes of Executive Order 12866, ''Regulatory Planning and Review,'' and thus has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* Treasury must consider whether this rule, if promulgated, will have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). In this case, Treasury certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rule provides for a technical change in the manner in which Treasury will calculate a figure relevant to operation of the Program and to better conform it to Congressional requirements. The only other rule change is to provide for earlier notice to insurers of the IMARA calculation than the existing rule. It has no effect on the collection of the data (including data collected from small entities) under the Program rules.

Paperwork Reduction Act. The proposed rule does not involve the collection of information and thus has not been submitted to OMB for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). The proposed rule only involves the calculation and public notification of the IMARA in connection with the Program based on data collected by Treasury under rules which have already been subject to OMB review and approval under Control No. 1505–0257.

List of Subjects in 31 CFR Part 50

Insurance, Terrorism.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR part 50 as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as amended by Pub. L. 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839 and Pub. L. 114–1, 129 Stat. 3 (15 U.S.C. 6701 note) Pub. L. 114–74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

[13] 81 FR 18950, 18952 (April 1, 2016).

[14] This language was proposed in the 2016 NPRM and included in the Program Final Rules Except Certification.

[15] 31 CFR 50.4(m)(3).

■ 2. Amend § 50.4 by revising paragraphs (m)(2) introductory text, (m)(2)(i) and (m)(3) to read as follows:

§ 50.4 Definitions.

* * * * *

(m) * * *

(2) For calendar years beginning with 2020 and any calendar year thereafter as may be necessary, such amount is the lesser of the aggregate amount, for all insurers, of insured losses once there has been a Program Trigger Event during the calendar year and the annual average of the sum of insurer deductibles for all insurers for the prior 3 years, to be calculated by taking:

(i) The total amount of direct earned premium reported by insurers to Treasury pursuant to § 50.51 in the three calendar years prior to the calendar year in question, and then dividing that figure by three; and

* * * * *

(3) For calendar year 2020 and each subsequent calendar year, Treasury shall publish in the **Federal Register** the insurance marketplace aggregate retention amount no later than December 31 of the prior calendar year.

* * * * *

Dated: August 21, 2019.

Bimal Patel,

Assistant Secretary for Financial Institutions.

[FR Doc. 2019–18728 Filed 9–5–19; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 1042

[EPA–HQ–OAR–2018–0638; FRL–9999–22–OAR]

RIN 2060–AU30

Marine Diesel Engine Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the national marine diesel engine program to provide relief provisions to address concerns associated with finding and installing certified Tier 4 marine diesel engines in certain high-speed commercial vessels. The proposed relief is in the form of additional lead time for qualifying engines and vessels. EPA is also making a technical correction to the diesel fuel regulations to allow fuel manufacturers and distributors to make distillate diesel fuel that complies with the global sulfur standard that applies internationally instead of the fuel standards that otherwise apply to distillate diesel fuel in the United States.

DATES:

Comments: Written comments must be received by October 21, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before October 7, 2019.

Public Hearing: There will be a public hearing September 20, 2019, in Bath, Maine. Inquire about arrangements for a public hearing using the contact information in **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES:

Public hearing. We will hold a public hearing September 20, 2019 at the Maine Maritime Museum, 243 Washington Street, Bath, Maine 04530, (207) 443–1316. The hearing will start at 9:30 a.m. local time and continue until everyone has had a chance to speak.

Public Participation: Public hearing: Hearing participants are invited to notify EPA of interest in presenting testimony at the public hearing; see **FOR FURTHER INFORMATION CONTACT**. We encourage commenters to provide a copy of oral testimony by email or in hard copy. EPA may ask clarifying questions during the oral presentations but will generally not respond to the presentations at the hearing. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0638, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket. EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0638. All documents in the docket are listed on the *www.regulations.gov* website. 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, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Alan Stout, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4805; email address: *stout.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

This action relates to marine diesel engines with rated power between 600 and 1,400 kW intended for installation on vessels flagged or registered in the United States, vessels that use those engines, and companies that manufacture, repair, or rebuild those engines and vessels. This action also relates to companies that produce and distribute distillate diesel fuel.

Proposed categories and entities that might be affected include the following:

Category	NAICS code [a]	Examples of potentially affected entities
Industry	333618	Marine engine manufacturing.
	336611	Shipbuilding and repairing.
	324110	Petroleum refineries (including importers).
	424710	Petroleum bulk stations and terminals.
	493190	Other warehousing and storage-bulk petroleum storage.

[a] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely covered by these rules. This table lists the types of entities that we are aware may be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. You may direct questions regarding the applicability of this action to the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Summary

EPA's Final Rule for Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less than 30 Liters per Cylinder adopted Tier 4 emission standards for commercial marine diesel engines at or above 600 kW (73 FR 37096, June 30, 2008). These standards, which were expected to require the use of aftertreatment technology, phased in from 2014 to 2017, depending on engine power.[1] Some boat builders have informed EPA that there are no certified Tier 4 engines with suitable performance characteristics for the vessels they need to build, specifically for high-speed commercial vessels that rely on engines with rated power between 600 and 1,400 kW that have high power density. To address these concerns, EPA is proposing to provide additional lead time for implementing the Tier 4 standards for engines used in certain high-speed vessels. We are also proposing to streamline certification requirements to facilitate or accelerate certification of Tier 4 marine engines with high power density. Each of these elements is discussed in more detail in this proposal.

EPA is also amending the diesel fuel regulations to allow fuel manufacturers and distributors to make distillate diesel fuel that complies with the global sulfur standard that applies internationally instead of the fuel standards that otherwise apply to distillate diesel fuel in the United States.

EPA adopted emission standards for marine diesel engines and sulfur standards for marine fuels under Clean Air Act authority (42 U.S.C. 7401–7671q). The amendments under consideration in this rule are covered by that same authority.

II. Regulatory Amendments To Allow for Distribution of Global Marine Fuel

In this action, we are proposing changes to the regulations at 40 CFR part 80, subpart I, to allow for distribution of distillate diesel fuel that complies with the 0.50 percent (5,000 ppm) global sulfur standard contained in Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI). The United States ratified MARPOL Annex VI and became a Party to this Protocol on October 8, 2009. MARPOL Annex VI requires marine vessels operating globally to use fuel that meets the 0.50 percent sulfur standard starting January 1, 2020, rather than the current standard of 3.50 percent sulfur (''global marine fuel''). For comparison, the MARPOL Annex VI standard is 0.10 percent sulfur for fuel used in vessels operating in designated Emission Control Areas (ECAs).[2] As with ECA marine fuel, we need to amend 40 CFR part 80 to allow distribution of global marine fuel in the United States.

Until the 0.50 percent sulfur standard takes effect, global marine fuel has consistently been residual fuel, not distillate fuel. Other than ECA marine fuel, residual fuel is not subject to fuel sulfur standards under 40 CFR part 80. As a result, it has been unnecessary to adopt a provision allowing global marine fuel to exceed the ultra low-sulfur diesel (ULSD) fuel sulfur standards. However, due to the high sulfur content of residual fuel, it will be common for global marine fuel to be a distillate fuel starting in 2020.[3] U.S. refiners intend to supply product to meet the demand for global marine fuel.

We are proposing several regulatory changes to accommodate the supply and distribution of distillate diesel fuel as global marine fuel. We are proposing to exempt such fuel from the prohibition against distributing distillate diesel fuel that exceeds the ULSD and ECA marine fuel sulfur standards. This exemption includes several conditions. (1) The fuel must not exceed 0.50 weight percent sulfur; (2) fuel manufacturers must designate the fuel as global marine fuel; (3) product transfer documents accompanying the fuel must identify it as global marine fuel; (4) global marine fuel must be segregated from other fuels that are subject to the diesel fuel standards in 40 CFR part 80, subpart I; (5) the fuel may not be used in any vehicles, engines, or equipment operating in the United States (including vessels operating in an ECA or ECA-associated area); and (6) manufacturers and distributors must meet conventional recordkeeping requirements. These proposed changes incorporate the global sulfur standard under MARPOL Annex VI and include compliance provisions that largely mirror what we currently require for the manufacturers and distributors of home heating oil, which is another class of distillate fuel not subject to diesel fuel standards under 40 CFR part 80. These proposed provisions create documentation oversight requirements that will help prevent global marine fuel

[1] For engines up to 1,000 kW, compliance could be delayed for up to nine months, but no later than October 1, 2017.

[2] Designated Emission Control Areas for the United States include the North American ECA and the U.S. Caribbean Sea ECA. More specific descriptions may be found in EPA fact sheets: ''Designation of North American Emission Control Area to Reduce Emissions from Ships,'' EPA–420–F–10–015, March 2010, *https://www.epa.gov/regulations-emissions-vehicles-and-engines/designation-north-american-emission-control-area-marine;* and ''Designation of Emission Control Area to Reduce Emissions from Ships in the U.S. Caribbean,'' EPA–420–F–11–024, July 2011, *https://www.epa.gov/regulations-emissions-vehicles-and-engines/designation-us-caribbean-emission-control-area-marine.*

[3] Distillate fuels are subject to fuel sulfur standards for ULSD (15 ppm) and ECA marine fuel (1,000 ppm). In-use distillate fuels sold in the United States generally have sulfur content that is somewhat lower than these standards to accommodate regulatory compliance margins. According to the most recent data reported by the IMO Secretariat (MEPC 74/5/3, February 8, 2019), the average sulfur content of marine distillate marine fuel in 2018 was about 700 ppm, with only 3.7% of samples exceeding 1,000 ppm. The average sulfur content of marine residual fuel was about 26,000 ppm, with about 82.5% of samples falling in the range of 20,000 ppm to 35,000 ppm. Only about 0.5% of residual fuel samples exceeded 35,000 ppm and the rest of the samples, 17%, reported sulfur content less than 20,000 ppm.

from being diverted into markets that are subject to ULSD or ECA marine standards.

As noted above, the narrow set of amendments proposed in this rule are intended to remove a potential regulatory obstacle to the sale in the United States of marine fuel that meets MARPOL Annex VI global sulfur cap of 5,000 ppm. Separate from this rule, we will be considering broader questions about how best to implement the 2020 global marine fuel standard.

III. Background for Amendments Related to Emission Standards for Marine Diesel Engines

In 2008, EPA adopted Tier 3 and Tier 4 emission standards for new marine diesel engines with per-cylinder displacement less than 30 liters (73 FR 37096, June 30, 2008). The Tier 3 standards were based on engine manufacturers' capabilities to reduce particulate matter (PM) and oxides of nitrogen (NO_X) emissions with recalibration and other engine-based technologies. The Tier 4 standards were based on the application of catalytic aftertreatment technology, including selective catalytic reduction (SCR). These Tier 4 standards currently apply to commercial marine diesel engines with rated power at or above 600 kW. The Tier 3 standards phased in for different engine sizes and power ratings from 2009 to 2014. The Tier 4 phase-in schedule applied these stringent standards starting in 2014 to engines at or above 2,000 kW, which are most prevalent on large workboats that are less sensitive to engine size and weight concerns. The standards started to apply at the start of model year 2017 for engines from 1,000 to 1,400 kW, and on October 1, 2017 for engines from 600 kW to 999 kW. The schedule for applying the Tier 4 standards was intended to give engine manufacturers time to redesign and certify compliant engines, and to give boat builders time to redesign their vessels to accommodate the Tier 4 engines, especially with respect to engine size and weight.

The 600 kW threshold for applying the Tier 4 standards was intended to avoid aftertreatment-based standards for small vessels used for certain applications that were most likely to be designed for high-speed operation with very compact engine installations. Most engines above 600 kW provide power for various types of workboats and larger passenger vessels whose performance is less dependent on the size and weight of the engine. We were aware that there would be some high-speed vessels with engines above 600 kW, but expected that engine manufacturers would be able to certify 600–1,400 kW engines and vessel manufacturers would be able to make the necessary vessel design changes during the nine-year period between the final rule and the implementation of the Tier 4 standards.

In response to the proposal preceding the 2008 final rule, some commenters recommended that the Tier 4 standards apply to engines as small as 37 kW, since small land-based nonroad diesel engines were subject to similar aftertreatment-based standards. Other commenters advocated a vessel-based approach, for example exempting engines installed on patrol boats and ferries from the Tier 4 standards. However, engine manufacturers commented that a vessel-based approach would be unworkable because they would then need to certify engines for a range of vessel types. Several commenters affirmed the 600 kW threshold as appropriate, and no commenters suggested a higher threshold. As a result, EPA finalized the 600 kW threshold without further limiting the Tier 4 standards to particular vessel types.

One manufacturer has certified Tier 4 engines below 1,400 kW, and there are no certified Tier 4 engines below 1,400 kW with a power density greater than 35 kW per liter (total engine displacement).[4] This contrasts with engines available under EPA's Tier 3 commercial standards, which included several engine models with power densities exceeding 35 kW/liter displacement.

Over the course of the last year, EPA staff have had several teleconferences and site visits to gather information and explore options for addressing concerns related to engine availability and meeting Tier 4 requirements.[5] This has helped us to understand constraints, capabilities, processes, and concerns for engine manufacturers, vessel manufacturers, and others affected by the Tier 4 standards.

EPA has learned that manufacturers of vessels for certain high-speed commercial applications continue to face important challenges associated with the Tier 4 engine standards. These vessels have performance needs for achieving substantial propulsion power from a light-weight engine. In short, manufacturers have been looking for engines with higher power density than those certified to Tier 4 standards. As engine manufacturers certify additional Tier 4 engines, vessel manufacturers will need time to evaluate those engine options and make changes to vessel designs to account for the changing engine parameters and specifications.

EPA is proposing to allow additional lead time to address these concerns for high-speed vessels. This would allow engines installed on these vessels to continue to meet the Tier 3 standards, which would allow time for engine manufacturers to certify additional engine models, and for vessel manufacturers to make the necessary adjustments to their vessels.

Note that the proposed provisions allowing additional lead time for EPA's Tier 4 marine diesel engine standards are distinct from the international engine emission standards that apply under Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI). The U.S. Coast Guard recently published a Work Instruction explaining its intention to defer enforcement of MARPOL Annex VI NO_X standards for certain engines certified to EPA Tier 3 standards as long as MARPOL-compliant engines continue to be unavailable.[6] That relief from emission standards is targeted at engines not subject to EPA's Tier 4 standards, especially engines with rated power between 130 and 600 kW. Because the domestic and international emission standards are adopted under different statutory authorities, and because the U.S. Coast Guard policy applies for engines not subject to EPA's Tier 4 standards, this proposed rule should have no bearing on the international standards. It is also the case that U.S. vessels operating only domestically are not subject to the standards adopted under MARPOL Annex VI (see 40 CFR 1043.10(a)(2)). As a result, the high-speed commercial vessels that are the subject of this proposed rule will not be subject to emission standards under MARPOL Annex VI as long as they do not navigate in foreign waters.

[4] The discussion in this proposed rule is based on certification information as of June 2019. The discussion does not reflect new certifications in July 2019 or later. We encourage individual engine manufacturers to submit comments describing engine specifications for engine models that have certified or expect to certify, and how these Tier 4 engine models may be suitable for powering high-speed vessels.

[5] ''Stakeholder Interactions in Anticipation of Proposing Additional Lead Time for Tier 4 Compliance for High-Speed Marine Vessels,'' EPA memorandum from Alan Stout to Docket EPA–HQ–OAR–2018–0638, July 31, 2019.

[6] ''Exercise of Enforcement Discretion with regard to MARPOL Annex VI Regulation 13.5.1.2,'' USCG Office of Commercial Vessel Compliance (CG–CVC) Mission Management System (MMS) Work Instruction, CVC–WI–014(2), October 17, 2018.

IV. Technical Discussion for Amendments Related to Emission Standards for Marine Diesel Engines

As described above, EPA's Tier 4 marine diesel engine standards apply to commercial engines at or above 600 kW. With one exception, engine manufacturers have discontinued production of engine models instead of certifying those engines to the Tier 4 standards. This has prevented vessel manufacturers from being able to produce certain types of high-speed vessels. Complying with current standards poses technical and economic challenges for engine and vessel manufacturers. This also has economic consequences for end users who are not able to purchase vessels until they become available.

1. Boat Builder Challenges

Manufacturers of certain high-speed vessels have described their challenges with finding certified Tier 4 engines and with modifying their vessel designs to accommodate Tier 4 engines once they become available.[7] This applies for lobster boats, pilot boats, and various additional types of high-speed vessels.

Lobster Boats. When we adopted the Tier 4 standards in 2008, most if not all lobster boats used engines below 600 kW. Targeted lobster beds were typically located relatively close to shore. Lobster boats navigating in these areas have size and performance requirements that do not call for engines above 600 kW. Since 2008, however, it has become common to navigate to lobster beds 40 miles or farther from shore. The greater traveling distance necessitates more cargo space for a greater catch, and more speed to complete a day's work in a reasonable time. These factors caused a demand for larger vessels and more engine power, which led boat builders to install engines above 600 kW in lobster boats. Prior to the Tier 4 standards taking effect in 2017, engines for these lobster boats were subject to Tier 3 standards and thus required no aftertreatment technology. As a result, the lobster-boat engines needed for high speed and ocean navigation could fit into fiberglass hulls with minimal changes to fiberglass molds, or vessel design generally.

Lobster boat builders looking to continue to install engines above 600 kW that are now subject to Tier 4 standards need to prepare for more fundamental changes to vessel design to account for the room needed for additional emission control hardware, which raises other design issues. For example, onboard lobster tanks need to remain isolated from the reconfigured engine room and exhaust system to maintain low water temperature. However, lobster boat builders are not able to make substantial progress in redesigning their vessels until they have certified or prototype Tier 4 engines available. Once those engines are available, boat builders can undertake the anticipated effort to work out specific design needs for installing the Tier 4 engines in each vessel, including any necessary sea trials. A memo to the docket describes some of the challenges related to designing lobster boats and other high-speed vessels with SCR-equipped engines.[8]

Pilot Boats. Commercial ports depend on pilot boats to transport pilots to incoming ships (and from outgoing ships) several miles away from the port to safely navigate the ships through the shipping channels and within the port area. Vessel specifications are carefully tailored to the specific needs of a given port, accounting for a wide range of factors to ensure safe and effective operation under demanding conditions. As described above for lobster boats, building a vessel with a Tier 4 engine and its accompanying catalyst system requires design changes to handle the engine's greater size and weight. Use of a new Tier 4 engine and accompanying catalyst system requires a thorough reassessment of vessel design to accomplish a proper balance between vessel length and total propulsion power. For example, the vessel would need engines with higher maximum power output if the vessel's length, width, or depth increases to accommodate the new engine and the accompanying catalyst system. One parameter that helps solve the design challenge is the engine's power density. Increasing power density allows for more power without increasing total engine weight, which allows for increasing (or regaining) vessel speed. Tier 4 engines with the appropriate power ratings for pilot boats are available, but there are no ratings currently available with power density above 35 kW/liter displacement. As a result, the available Tier 4 engines are too large and heavy to allow vessels to meet performance specifications. As Tier 4 engines between 600 and 1,400 kW become available, manufacturers of pilot boats can start to resolve these vessel design issues, but an acceptable solution may depend on the availability of Tier 4 engines that meet the need for higher power density.

A complicating factor for pilot boats is other federal, state, or local programs that impose speed restrictions on vessels for certain vessel lengths. Specifically, pilot boats that operate in certain coastal areas are subject to whale-strike avoidance rules that are designed to protect migrating and calving right whales. In designated areas off the coast of Georgia, for example, vessels 65 feet and longer may not exceed an operating speed of 10 knots from November 1 to April 30 each year.[9] The whale-strike avoidance rules increase the demand for pilot boats that are less than 65 feet long. This additional constraint further complicates the challenge to design vessels with Tier 4 engines as the SCR emission control system takes up a significant amount of already limited space. Here again, the use of Tier 4 engines will require significant boat changes and more time is needed to resolve these challenges.

Other high-speed vessels. Other types of high-speed vessels may need relief. For example, one boat builder wants to build a high-speed research vessel for which there are no suitable Tier 4 engines available. The intended vessel would have a fiberglass hull and is otherwise similar to lobster boats, as described above. In addition, we are aware that there are any number of additional applications of high-speed vessels that may need Tier 4 propulsion engines above 600 kW with high power density, such as law enforcement, fire-fighting, and charter fishing. Section V describes provisions to allow for additional lead time for engines and vessels meeting certain criteria focusing on high-speed operation and the need for engines with high power density, rather than naming certain types of vessels. We request comment on the appropriateness of these proposed engine and vessel criteria to properly target temporary relief from the Tier 4 standards for the different types of high-speed vessels that are affected by the lack of certified engines that are suitable for those vessels. We also request comment on the annual numbers of each type of each vessel we should expect to be covered by this rule.

Hovercraft, while not conventional high-speed vessels, may also be a more

[7] ''Stakeholder Interactions in Anticipation of Proposing Additional Lead Time for Tier 4 Compliance for High-Speed Marine Vessels,'' EPA memorandum from Alan Stout to Docket EPA–HQ–OAR–2018–0638, July 31, 2019.

[8] ''Technical Analysis for Amendments Related to Marine Diesel Engine Emission Standards,'' EPA memorandum from Cheryl Caffrey to Docket EPA–HQ–OAR–2018–0638, August 1, 2019.

[9] The whale-strike avoidance rule was originally adopted by the National Marine Fisheries Service on October 10, 2008 (73 FR 60173). See 50 CFR part 224.105.

challenging case for installing Tier 4 engines. Hovercraft devote substantial engine power to create lift in addition to powering fan blades for propulsion. These vessels are accordingly especially sensitive to engine weight. Installing engines with high power density is important to preserving hovercraft functionality. We request comment and any supporting information and data related to the use of Tier 4 engines in hovercraft and on the potential need for relief from Tier 4 standards for engines in hovercraft.

2. Engine Manufacturer Challenges

Tier 4 marine diesel engine standards can be met through application of selective catalytic reduction (SCR) technology. SCR has been in widespread use for many years with a very wide range of engines and equipment applications. Adapting SCR systems to work with marine engines requires some additional design and development effort to produce catalyst systems that work properly and safely in a marine environment. Hundreds of marine vessels currently operate with SCR systems, most of which involved retrofitting engines with the aftertreatment technology. This includes more than 50 newbuild installations on U.S. vessels with certified Tier 4 engines that include SCR. Engine manufacturers have also designed and certified some engine models to Tier 4 standards using SCR technology. Some manufacturers of other marine engine models are also in the process of carrying out development programs for their engines using SCR technology, in part because of EPA's Tier 4 standards, but also because of the international Tier III NO_X standard adopted by the International Maritime Organization (IMO) under MARPOL Annex VI. This ''IMO Tier III NO_X standard'' applies for vessels built in 2016 and later that operate in the North American and U.S. Caribbean Sea Emission Control Areas.

The IMO Tier III NO_X standard was originally adopted in 2008 to apply starting in 2016 for any future ECAs, including ECAs adopted for other countries. This would likely have led to widespread development of SCR-equipped marine engines certified to the IMO Tier III NO_X standard. However, due to subsequent amendments, the IMO Tier III NO_X standard applies in 2016 only for the North American and U.S. Caribbean Sea Emission Control Areas. The IMO Tier III NO_X standard does not apply for engines on vessels built before 2021 when operating in the Baltic Sea and North Sea Emission Control Areas. If other countries designate additional Emission Control Areas, each one would have its own implementation date for the IMO Tier III NO_X standard. This amendment to the international standard has delayed the schedule for developing SCR for marine engines and certifying engines to meet those standards.

The combination of EPA standards and international NO_X standards in the 2020–2021 time frame is expected to lead engine manufacturers to continue to develop, certify, and build marine engines with SCR. There are also European emission standards for inland waterways that will require manufacturers to design engines with aftertreatment technologies—SCR for meeting NO_X standards and diesel particulate filters for meeting particulate number standards.[10]

Certifying to EPA standards requires some development and demonstration that goes beyond what is required to meet the IMO Tier III NO_X standard. For example, manufacturers certifying marine diesel engines to EPA standards must (1) meet PM, HC, and CO standards and (2) demonstrate that engines will continue to meet standards over the engine's defined regulatory useful life. As with NO_X control, these additional EPA requirements do not pose insurmountable technical challenges, but they contribute to increasing the cost of certifying engines.

V. Proposed Relief Related to Emission Standards for Marine Diesel Engines

To address the challenges described above, EPA is proposing revisions to our marine diesel engine emission control program for certain high-speed vessels and associated engines with rated power between 600 and 1,400 kW. These changes are intended to allow more time for engine manufacturers to certify additional engine models and for vessel manufacturers to design and build products that comply with Tier 4 standards. We are also proposing to better align certification requirements with the characteristics of these engines, especially as it relates to demonstrating the durability of emission controls.

1. Adjusted Implementation Dates

We are proposing to provide additional lead time for implementing the Tier 4 standards for qualifying engines and vessels as described in this section and summarized in Table 1. This additional time will allow engine manufacturers to design and certify engines to the Tier 4 standards that are suitable for use in high-speed vessels. The additional time will also allow vessel manufacturers to redesign their vessels as needed to accommodate the Tier 4 technology.

We are proposing that implementation of the Tier 4 standards for qualifying engines and vessels would occur in two phases. The first phase would set model year 2022 as the implementation deadline for engines installed in a wide range of high-speed vessels. The second phase would set model year 2024 as the implementation deadline for engines installed in a narrower set of high-speed vessels that we believe will require additional lead time.

We are proposing to limit these revisions to qualifying high-speed vessels and high power density engines for products that need additional lead time. Applying relief more broadly would remove demand for engines certified to Tier 4 standards, even if they would be suitable for powering those vessels. We would then forego achievable environmental benefits and could cause those engine and vessel manufacturers that have already developed Tier 4 compliant engines and vessels to be left at a competitive disadvantage.

High-speed vessels may be characterized as planing vessels based on a hull design that causes the vessel to rise up and experience lower hydrodynamic drag (with a corresponding decrease in required propulsion power) when operating at high speed. This contrasts with displacement hulls, for which propulsion power continues to increase with increasing vessel speed, and which do not experience the same design and installation challenges. While this distinction is straightforward, there is no generally accepted way to draw a clear line between the two types of vessels. This is illustrated by ''semi-planing'' vessels, which have operating characteristics that fall between planing and displacement vessels. The proposed vessel speed criterion is based on definitions used for ''high-speed craft'' by classification societies.[11] Each classification society uses its own definition, but all follow the same

[10] Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No. 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC.

[11] Classification societies generally act on behalf of national governments to oversee implementation of domestic and international maritime standards for construction and operation of ships. This typically includes inspections, surveys, and certification. The International Association of Classification Societies has twelve members (*www.iacs.org.uk*).

principles. We are proposing to limit relief to high-speed vessels that have a maximum operating speed (in knots) at or above $3.0 \cdot L^{1/2}$, where L is the vessel's waterline length, in feet. This includes an upward adjustment of about 40 percent compared to published definitions to draw a clearer line to identify high-speed vessels. As an example, 45-foot vessels would need to have a maximum speed of at least 23 knots to qualify for relief using the proposed threshold. The vessels that have been the subject of requests for Tier 4 relief would qualify based on this proposed criterion for high-speed vessels. Based on our engagement with marine stakeholders in the past year, we believe vessels whose maximum speed is below the specified threshold do not have the same sensitivity to engine size and weight that should qualify them for relief from using Tier 4 engines. The proposed vessel speed criterion applies equally to both proposed phases of adjusted implementation dates for the Tier 4 standards.

There are other definitions of ''high-speed craft'' that are based on a vessel's displaced volume rather than the length. A displacement-based criterion would have the advantage of accounting for a vessel's draft and beam in addition to the length for a more robust characterization. On the other hand, since vessel length is much easier to verify, there is a clear advantage to defining the criterion based only on the length. We request comment on replacing the proposed vessel speed criterion with an alternative that is $10 \cdot d^{1/6}$, where d is the vessel's displaced volume corresponding to the design waterline, in m^3 or tonnes. The alternative criterion would be largely equivalent to the proposed criterion, but would involve a higher qualifying speed for wider vessels.

Additionally, for both phases of the relief, we are proposing that the relief apply only to vessels classified as uninspected vessels by the U.S. Coast Guard.[12] Coast Guard designates all vessels as either inspected or uninspected. Inspected vessels carry freight-for-hire or any hazardous or dangerous cargo. Towing and most passenger vessels are also inspected. These ships are typically displacement vessels that operate low in the water and use very large propulsion engines that do not operate at high speeds. They are also typically custom-designed and built, meaning vessel manufacturers can and have been able to accommodate new-tier propulsion and auxiliary engines in new vessels in a timely manner. As a result, these vessels do not require the proposed adjusted implementation dates as they are currently being designed and built with compliant engines.

In contrast, uninspected vessels include recreational vessels not engaged in trade, non-industrial fishing vessels, very small cargo vessels (less than 15 gross tons), and miscellaneous vessels such as pilot boats, patrol and other law-enforcement vessels, fire boats, and research vessels, among others. Uninspected vessels are likely to be considerably smaller than inspected vessels and operate at higher speeds. Also, these vessels are often built on a common design platform and may use fiberglass hulls that are seldom re-designed. This means these boats are more likely to be designed to use only certain engines with a very similar, small footprint, and there can be less flexibility to rapidly incorporate new engine designs. Not all uninspected vessels require the adjusted implementation dates proposed in this rule to address their design constraints, but the contrast between different vessel types makes clear that the adjusted implementation schedule for the Tier 4 standards is appropriately focused on uninspected vessels.

We are proposing to limit relief to propulsion engines of a certain size on qualifying vessels. Specifically, we propose to limit the first phase to propulsion engines with maximum power output up to 1,400 kW, and power density of at least 35.0 kW per liter displacement. Category 1 engines have per-cylinder displacement below 7.0 liters. We are proposing to additionally limit relief to vessels up to 65 feet in length with total nameplate propulsion power at or below 2,800 kW (to accommodate vessels with multiple propulsion engines). The combination of the limit on maximum power for each engine with the limit on the total nameplate propulsion power has the practical effect of limiting relief to vessels with one or two propulsion engines. These criteria are intended to ensure that relief from the Tier 4 standards is provided to those engines and vessels that require additional lead time. We believe vessels not meeting these criteria do not have the same design challenges described in Section II in this preamble. For example, vessels longer than 65 feet that are subject to whale-strike avoidance rules need to operate at reduced speed and are therefore less sensitive to size and weight constraints that apply for smaller vessels. Some of these criteria may be redundant; however, we believe it is best to include multiple parameters as a precaution to ensure that the relief applies only to those engines and vessels that need additional lead time.

We propose to limit the second phase to vessels with a single propulsion engine with maximum power output up to 1,000 kW and power density of at least 40.0 kW per liter displacement, where the vessel is made with a nonmetal hull and has a maximum length of 50 feet.

We believe vessel manufacturers benefitting only from the first phase can comply in model year 2022 using engines that we expect to be certified to Tier 4 standards in 2019 or 2020. We therefore propose to apply the model year 2022 implementation date for vessels with steel or aluminum hulls, with vessel length between 50 and 65 feet, with twin-engine configurations, and needing propulsion engines with power ratings between 1,000 and 1,400 kW.

In contrast, vessel manufacturers need additional time to redesign fiberglass and other nonmetal vessels up to 50 feet long using 600–1,000 kW engines certified to Tier 4 standards. Based on engine manufacturers' current projections and project plans, certified engines with the appropriate power and power density will be not be available until the latter part of 2020 or 2021. Once suitable Tier 4 engines are certified, vessel manufacturers will then need time to redesign their vessels accordingly. We expect this to be a greater challenge for fiberglass and other nonmetal vessels due to material-related structural limitations, reliance on molds for construction, and reduced flexibility in modifying vessel architecture. Nonmetal hulls may be made with carbon fiber or wood instead of fiberglass.

In summary, we are proposing to set revised Tier 4 implementation dates for high power density propulsion engines in two phases based on engine and vessel characteristics as noted in the following table:

[12] Title 46, Chapter I, of the Code of Federal Regulations.

TABLE 1—SUMMARY OF QUALIFYING CRITERIA FOR ADJUSTED TIER 4 IMPLEMENTATION DATES

Criteria	Phase 1	Phase 2
Vessel speed (knots)	>3.0 · (feet)½	>3.0 · (feet)½.
USCG vessel classification	uninspected	uninspected.
Engine power density	>35.0 kW/liter	>40.0 kW/liter.
Engine power rating	≤1,400 kW	≤1,000 kW.
Total vessel propulsion power	≤2,800 kW	≤1,000 kW.
Vessel length	≤65 feet	≤50 feet.
Vessel hull construction	any	nonmetal.
Model years for continued use of Tier 3 Engines	through 2021	2022 and 2023.

Engine manufacturers are in the process of developing and certifying Tier 4 engines with higher power density that would be suitable for lobster boats, pilot boats, and other high-speed vessels. We expect engine manufacturers and their distributors and dealers will continue to provide support for vessel manufacturers as they modify vessel designs to accommodate the Tier 4 engines. The additional lead time associated with this proposed rule will allow vessel manufacturers to reconfigure vessels, create new tooling, perform sea trials, and start producing compliant vessels.

For vessel manufacturers to benefit from the proposed relief, engine manufacturers will need to certify engines to Tier 3 commercial standards for installation in newly constructed vessels. Vessel manufacturers may need these engines very soon after we finalize the proposed provisions. This would generally involve restarting production of engine configurations that were already certified to the Tier 3 commercial standards before 2017. Engine manufacturers may still be producing these or substantially equivalent engine configurations as certified Tier 3 recreational engines or as exempt replacement engines. In most cases, engine manufacturers can resubmit information from their earlier Tier 3 application for certification to cover the new production. As with all EPA standards, we cannot compel engine manufacturers to certify their engines as contemplated in this proposed rule, but we expect that engine manufacturers will be responsive to vessel manufacturer demand and that they will be ready and able to provide certified engines. We therefore expect vessel manufacturers to be able to buy the engines they need to continue production during the transition period.

The specified criteria clarify which engines and vessels qualify for continuing to be subject to Tier 3 standards for the extended transition before meeting the Tier 4 standards. If any engines or vessels utilize these provisions to comply with Tier 3 standards without meeting the specified criteria, we would expect to apply the prohibitions of 40 CFR 1068.101(a)(1) for new engines and vessels introduced into U.S. commerce based on those engines not being certified to the Tier 4 standards.

Hovercraft present a special case. While sales volumes of hovercraft are very small, they may face the same constraints related to availability of certified high power density engines and challenges of redesigning vessels to accommodate Tier 4 engine technology. Because they do not have a conventional waterline during operation, and maximum speed is not governed by conventional hydrodynamic principles, the criteria described above are not effective for qualifying hovercraft for the proposed adjustment to Tier 4 implementation. As with the other types of vessels, we expect engine development and certification to move forward, including engines with more compact aftertreatment systems. We accordingly request comment on the best approach for applying Tier 4 standards for hovercraft in a time frame that allows vessel manufacturers to address technical concerns associated with designing the vessels with SCR-equipped engines. This might involve treating hovercraft as a separate sub-category of vessels that qualify for one or both phases of relief described above for conventional vessels.

2. Relief Through Waivers for Qualifying Engines and Vessels

The proposed two-phase approach to adjust Tier 4 implementation for qualifying engines and vessels would apply without any separate EPA approval process. For qualifying engines and vessels, the Tier 3 engine certification requirements would continue to apply for the specified period.

We are additionally proposing a waiver process starting in 2024 for vessels meeting the Phase 2 specifications described in Table 1. We believe this provision may be needed if engine certification does not proceed as expected to provide available engines certified to Tier 4 standards with performance characteristics that are appropriate for the subject high-speed vessels.

Starting with model year 2024, manufacturers of vessels meeting the Phase 2 qualifications described in Table 1 would have the option to request in writing that EPA approve an exemption from the Tier 4 standards for vessels meeting the Phase 2 qualifications described in Table 1. EPA would evaluate these requests based on the availability of suitable certified Tier 4 engines at the time of the request for the intended vessel design. EPA could approve requests covering multiple vessels, but any approval would apply for a limited duration. As proposed, the waiver authority does not expire, so it allows manufacturers of qualifying vessels to avoid installing Tier 4 engines until suitable certified Tier 4 engine models become available.

Enforcement would apply as described in Section IV.1 in this preamble for new engines or vessels introduced into U.S. commerce under these waiver provisions without meeting the specified criteria.

We are aware that implementing standards in the context of waiver provisions raises concerns about inconsistencies within the industry and unintended consequences. Waiver provisions introduce a measure of uncertainty for planning and include a risk that some manufacturers will use the waiver provisions to gain a competitive advantage over other manufacturers who do not qualify for a waiver (or who choose not to request a waiver). Waiver provisions also create an administrative burden for both vessel manufacturers and EPA.

Considering these challenges related to waivers, we request comment on an alternative approach of simply adjusting the Tier 4 compliance deadlines further for the second phase of proposed relief (as summarized in Table 1). That alternative approach might involve setting the new start for Tier 4 at model

year 2028. This would allow additional time for engine manufacturers to certify engines between 600 and 1,000 kW to Tier 4 standards, and for vessel manufacturers to address installation challenges for the Tier 4 engines and technologies. A disadvantage of such a long-term adjustment to the Tier 4 implementation schedule is that engine manufacturers would have less incentive to certify the targeted engines because vessel manufacturers would not be required to buy and install them in qualifying vessels for many years.

We therefore request comment on the need for including waiver provisions for Tier 4 relief beyond model year 2024. We further request comment on the alternative of simply allowing more time, and what the advantages and disadvantages may be for such an approach. Finally, we request comment on the possibility of relying only on the hardship exemption provisions in 40 CFR 1068.255 to address concerns for Tier 4 relief beyond 2024.

3. Adjusted Requirements for Certifying Engines

As described above, there are no high power density engines currently certified to Tier 4 standards. We have heard that several engine manufacturers have plans to certify Tier 4 engines within the next few years. The biggest factor driving these engine product development and certification decisions is the expected sales volumes that would allow for recovering the investment in upgrading the engines. The coming standards for inland waterways in Europe and for European Emission Control Areas under MARPOL Annex VI are expected to contribute to demand for increasing sales volumes in a way that would support decisions to certify Tier 4 engines.

Based on conversations with engine manufacturers, we expect these market forces to be sufficient to supply the needed engines to support building compliant vessels with Tier 4 engines according to the revised schedule described above. Even so, we are proposing to revise engine certification requirements to reduce the costs and time needed for engine manufacturers to certify engines with high power density to Tier 4 standards. These proposed provisions are intended to help accelerate the market entry of Tier 4 marine engines with high power density.

a. Temporary Provision for Assigned Deterioration Factors

We are proposing a temporary provision allowing engine manufacturers to certify specific engines to Tier 4 standards based on assigned deterioration factors. Engine manufacturers rely on deterioration factors so they can test a new engine and adjust the test results mathematically to represent emission levels at full useful life. The regulations currently allow assigned deterioration factors only for small-volume engine manufacturers and post-manufacture marinizers. Assigned deterioration factors would reduce the cost and time to certify to Tier 4 standards, which would accelerate the schedule for certifying, and may lead manufacturers to make a decision to pursue Tier 4 certification in light of the expected low sales volumes for recovering the associated development costs.

To target the engines needed for high-speed vessels, we are proposing to allow assigned deterioration factors for 600–1,000 kW engines with power density above 35.0 kW/liter displacement through model year 2025, and for 1,000–1,400 kW engines with power density above 40.0 kW/liter displacement through model year 2023. These dates are set to apply for the first two years after the Tier 4 standards start to apply on the adjusted schedule, with the expectation that engine manufacturers could accumulate information on the durability characteristics of engines for those two model years before needing to develop family-specific deterioration factors.

There are currently no certified Tier 4 engines between 600 and 1,000 kW that are approaching 35.0 kW/liter displacement, so we believe it is appropriate for this power range to rely on the 35.0 kW/liter threshold that was used to set standards for Tier 3 commercial engines. In contrast, in the 1,000–1,400 kW range, there is already one certified Tier 4 engine that is close to 35.0 kW/liter displacement. We want to avoid creating relief for new certifications that would provide a competitive advantage over engines that are already certified using established procedures for durability testing. The higher power density threshold of 40.0 kW/liter displacement for 1,000–1,400 kW engines provides that buffer relative to engines already certified to Tier 4 standards.

We have reviewed available data to support proposing default values for assigned deterioration factors. The proposed deterioration factors are multiplicative values of 1.1 for NO_X and 1.4 for HC and CO, and an additive value of 0.003 g/kW-hr for PM.[13] Where an individual engine manufacturer has existing data available, for example, from certified land-based versions of their marine engines, EPA would consider that information, consistent with 40 CFR 1042.245(b), and may adjust the value of one or more default assigned deterioration factors accordingly.

Engine manufacturers would need to certify using family-specific deterioration factors in the first model year after the assigned deterioration factors are no longer available. This could be based on a conventional durability demonstration based on emission measurements before and after an extended period of service accumulation in the laboratory. It could alternatively be based on laboratory measurements after engines accumulate service hours when installed in vessels. Either of these approaches is permissible under current regulations (see 40 CFR 1042.245(c)). This approach would provide engine manufacturers with significant flexibility to determine deterioration factors. Test plans should be submitted to EPA in advance for review and approval. We would be ready to work through any testing or measurement issues as manufacturers work toward the goal of collecting robust information for determining appropriate deterioration factors.

We request comment on expanding the provisions for durability demonstrations to include both service accumulation and emission measurements with engines installed in vessels. We have procedures in place in 40 CFR part 1065, subpart J, to describe how to perform in-field measurements, but we would need to work out how to control engine operation to mimic the certification duty cycles, among other things. Concerns about removing engines for laboratory measurement are especially pronounced for larger engines. For many engines, it may be preferable to rely on laboratory measurements after service accumulation in a vessel, but waiving the requirement to measure emissions halfway through the service accumulation period.

b. Reduced Regulatory Useful Life for Light Commercial Engines

There are currently no engines certified to Tier 4 standards with power density above 35 kW per liter displacement. Engine manufacturers have expressed concerns about meeting the Tier 4 standards for a regulatory useful life of 10,000 hours. We

[13] ''Technical Analysis for Amendments Related to Marine Diesel Engine Emission Standards,'' EPA memorandum from Cheryl Caffrey to Docket EPA–HQ–OAR–2018–0638, August 1, 2019.

acknowledge that higher engine power ratings generally come from higher intake air pressures and greater fuel flow into the engine, which can cause some engine and aftertreatment components to wear out sooner. Engines with lower power density are designed for continuous operation for very long periods with minimal downtime. Engines with high power density are inherently lighter weight and have a shorter time before scheduled rebuilding. Under our current regulations, commercial marine engines are generally subject to the same regulatory useful life regardless of the power density. However, the performance demands associated with high power density make it more difficult to demonstrate that engines with aftertreatment technology will meet Tier 4 standards over the full regulatory useful life.

We are proposing to address this concern with an interim provision to establish a shorter regulatory useful life for commercial engines with very high power densities. The current regulatory useful life for these engines is 10,000 hours. We are specifically proposing to apply a new ''light commercial'' useful life of 5,000 hours for engines certified to the Tier 4 standards with power density above 50.0 kW/liter displacement. The 50.0 kW/liter threshold corresponds to power densities for engines certified to recreational engine standards. Commercial engine ratings can achieve power density consistent with engines used in recreational vessels. However, in contrast to recreational vessels, these light commercial vessels do not have operational characteristics that limit engine hours to very low levels. The proposed shorter useful life of 5,000 hours reflects the effects of high power density on engine durability in the context of vessels that have operational characteristics based on their commercial applications. We request comment and supporting information and data on the threshold for creating a sub-category of light commercial engines, and on the value of the useful life that should apply for certifying those engines. Any comments on the value of the useful life should include consideration of the recommended rebuild intervals for specific power densities.

These engines would also qualify for EPA-assigned deterioration factors as described above. Since the useful life decreases from 10,000 hours to 5,000 hours for qualifying engines, we would expect to adjust the values of assigned deterioration factors correspondingly. For example, the value of the deterioration factor for NO_X would decrease from 1.1 to 1.05; the value of the deterioration factor for HC and CO would decrease from 1.4 to 1.2; and the value of the deterioration factor for PM would decrease from 0.003 to 0.0015 g/kW-hr.

We are not proposing a sunset date for this interim provision for a shorter useful life, but we expect in the future to consider whether we should discontinue it after a satisfactory transition to Tier 4 standards for these engines, or whether we should continue to apply it indefinitely.

c. Engine Duty Cycle for Certification Testing

EPA's emission standards for marine diesel engines have always relied on the ''E3'' duty cycle specified by the International Organization for Standardization (ISO) for engines installed in commercial vessels with fixed-pitch propellers. This duty cycle includes four steady-state operating modes ranging from 25 to 100 percent of rated power, with the highest weighting for emissions at the higher-power modes. This weighting allows for calculating a composite emission test result to represent typical in-use operation. In contrast, the ISO E5 duty cycle, which applies for engines installed in recreational vessels, adds an idle mode and shifts the weighting for the other modes to place greater emphasis on low- and mid-power operation. The ISO E5 duty cycle was designed to apply for all vessels under 24 meters (78.7 feet) in length. The ISO duty cycles were perhaps developed with the simplifying assumption that vessels under 24 meters were high-speed planing vessels, and vessels longer than 24 meters were displacement vessels with corresponding extended operation at high engine loads. In previous rulemakings we chose instead to differentiate cycles only based on recreational vs. commercial installations to simplify certification for engine manufacturers. Engines may be installed in many different sizes and types of vessels, so we decided to apply the ISO E3 duty cycle for all commercial installations. Table 2 illustrates the speed and power settings for the ISO E3 and E5 duty cycles.

TABLE 2—SPEED AND POWER SETTINGS FOR THE ISO E3 AND E5 DUTY CYCLES

Mode No.	Engine speed	Percent of maximum test power	E3 weighting factors	E5 weighting factors
1	Maximum test speed	100	0.20	0.08
2	91%	75	0.50	0.13
3	80%	50	0.15	0.17
4	63%	25	0.15	0.32
5	Warm idle	0		0.30

Focusing on engines with high power density brings us back to the question of duty cycles. Based on our knowledge and discussions with marine industry stakeholders, we expect that anyone operating a commercial engine with high power density will not be operating the vessel predominantly at or near full power. Operating engines with high power density for prolonged periods at or near full power would lead to a much shorter engine life. Engine manufacturers often describe engines with low power density at ''continuous ratings'' and engines with high power density as ''intermittent ratings.'' We would expect operators of vessels with high power density engines to spend the most time at idle and low-power or mid-power operation, with occasional use at full power.[14] In short, it appears that engines with high power density would be best represented by operation over the ISO E5 duty cycle.

This observation applies most directly to engines with power density above

[14] ''Technical Analysis for Amendments Related to Marine Diesel Engine Emission Standards,'' EPA memorandum from Cheryl Caffrey to Docket EPA–HQ–OAR–2018–0638, August 1, 2019.

50.0 kW/liter displacement, where the engine's maximum power output leads to an expectation for shorter operating life (as described above). It applies, though to a lesser degree for engines with power density between 35.0 and 50.0 kW/liter displacement.

Measuring emission levels over a different duty cycle would yield different results, though it is not clear for a given engine calibration whether one cycle or the other would have higher emission levels. Perhaps more importantly, manufacturers would be able to adjust calibrations to fine-tune emission controls to work most effectively over the cycle that is most appropriate for a certain application.

We are considering amendments to adjust duty-cycle testing requirements for marine diesel engines. We would generally want to avoid changing the stringency of standards for engines that are already certified using existing test procedures. On the other hand, as noted above, there are no certified Tier 4 engines with power density above 35 kW/liter displacement. This same dynamic applies for engines below 600 kW, so we are also considering whether and how to adjust specified duty cycles for commercial engines with high power density that continue to be subject to Tier 3 standards.

In particular, we request comment on specifying the ISO E5 duty cycle for all commercial engines with power density above 35.0 kW/liter displacement. This could be instead of the ISO E3 duty cycle, or we could give manufacturers the option to select one cycle, or we could specify that manufacturers must meet standards using both cycles. Comments should address whether any recommended approach should apply differently for engines above or below 600 kW. Comments should also address whether any recommended approach should apply differently for engines at different levels of power density. We could, for example, make testing with the ISO E5 duty cycle optional for engines between 35.0 and 45.0 kW/liter displacement, and mandatory for engines above 45.0 kW/liter displacement.

VI. Economic and Environmental Impacts

1. Marine Diesel Engine Standards

We prepared an analysis of the economic, inventory, and human health and welfare impacts of this proposal using the inventory and cost estimation methods used to support our 2008 Final Rule and a simplified health benefits estimation method.[15] The results of that analysis are set out in Table 3 and summarized below.

With respect to costs, this proposal imposes no additional economic costs above those included in our 2008 rulemaking. Instead, we estimate that this proposal would result in cost reduction of about $5.4 million, using a behavioral modeling approach, or $5.8 million, using a full-cost pass-through approach (2018$). These are the estimated cost reductions from installing less expensive Tier 3 engines in new vessels during the relief period (2019 through 2023) and the associated operating cost reductions during the 13-year lifetime of those engines (2019 through 2035).

With respect to emission inventory impacts, the proposed amendment rule would change the implementation date of the Tier 4 standards for qualifying engines and vessels from 2017 to 2024, which would delay the emission and air quality benefits of those standards. The estimated annual increase in NO_X and PM_{10}[16] emissions associated with the proposed relief is about 108 and 2.3 short tons, respectively, in 2019, when both sets of engines are affected, decreasing to 37 and 1 ton, respectively, in 2022 and 2023, when only those engines 600 kW to 1,000 kW are affected. The lifetime inventory increase is estimated to be about 5,098 tons of NO_X and 107 tons of PM_{10}, assuming a 13-year lifetime. This represents less than one-tenth of one percent of the national annual emissions for these pollutants from commercial Category 1 marine diesel engines (*i.e.,* engines below 7.0 liters per cylinder displacement).

TABLE 3—ESTIMATED IMPACTS ON EMISSIONS AND COSTS

Year	Affected engines per year	NO_X increase per year (short tons)	PM_{10} increase per year (short tons)	Compliance cost reduction (2005$) *	Operating cost reduction (2005$)
2019	25	108.1	2.3	$456,000 to $531,000	$36,000
2020	25	216.3	4.6	$456,000 to $531,000	72,000
2021	25	324.4	6.8	$353,000 to $417,000	108,000
2022	21	361.0	7.6	$302,000 to $359,000	138,240
2023	21	397.6	8.4	$302,000 to $359,000	168,480
2024	0	397.6	8.4	0	168,480
Lifetime Impacts (sum of 2019–2035)	117	5,098	107	$4.1 to $4.4 million. ($5.4 to $5.8 million 2018$)	

* Costs were modeled in 2005$; lifetime impacts were converted in the final step of the analysis. Lower value of costs impacts estimated with a behavioral modeling approach, upper value estimated with a full-cost pass-through modeling approach. See ''Assessment Analysis: Proposed Marine CI Tier 4 Rule,'' EPA memorandum from Jean Marie Revelt, to Docket EPA–HQ–OAR–2018–0638 for details.

Finally, with respect to human health and welfare benefits, the forgone emissions reductions described above would also be associated with forgone improvements in human health. Using reduced form health benefit per ton values,[17] we estimate that the annual $PM_{2.5}$-related forgone benefits do not exceed a high-end estimate of $4.0 million in any given year (2015$). The total present value of the stream of forgone benefits over the years 2019 through 2035 range from $13 million to $41 million.

[15] See ''Assessment Analysis: Proposed Marine CI Tier 4 Rule,'' EPA memorandum from Jean Marie Revelt, to Docket EPA–HQ–OAR–2018–0638, August 1, 2019.

[16] Consistent with the 2008 Rule, this inventory analysis is for PM_{10}. In the 2008 rule, $PM_{2.5}$ was estimated at 97% of PM_{10}.

[17] $PM_{2.5}$-related health benefits are estimated by applying sector-specific (C1/C2 marine vessel engine) benefit per ton values for NO_X and directly-emitted $PM_{2.5}$ using a source apportionment approach that has been used past EPA analyses. See: Wolfe, P., Davidson, K. Fulcher, C., Fann, N., Zawacki, M., Baker, K.R. (2018). Monetized health benefits attributable to mobile source emission reductions across the United States in 2025. STOTEN, 650 (2019) 2490–2498, September.

Reduced form tools, by their nature, are subject to uncertainty.[18] In addition to the uncertainties present across the entire emissions-to-impact pathway, it is important to note that the monetized benefit per ton estimates used here reflect the geographic patterns of the underlying emissions and air quality modeling assumptions. They do not necessarily reflect the conditions of the policy scenario in which they are applied, which can lead to an over- or underestimate of benefits. For this analysis, as mentioned in discussion above, the forgone benefits may be overstated in a location like Maine, since there will be some transport of emissions offshore or to areas external to the United States with different population and geographic characteristics. However, for this analysis, this uncertainty is acceptable for characterizing a range of potential impacts.

2. Global Marine Fuel

A new global marine fuel standard of 0.50 percent (5,000 ppm) sulfur adopted into MARPOL Annex VI by the International Maritime Organization will go into effect on January 1, 2020 (''global marine fuel''). The U.S. refining industry has shared that they are well positioned to supply fuel meeting this new IMO standard.[19] However, they have also informed us that existing provisions in our diesel fuel regulations may lead to confusion as to their ability to distribute fuel in the United States that meets the 2020 standard for global marine fuel. We are therefore proposing changes to our regulatory text to clarify that U.S. refiners can confidently distribute global marine fuel up to the 5,000 ppm sulfur limit, which will facilitate smooth implementation of the 2020 global marine fuel standard.

To be clear, EPA is not proposing to adopt new marine fuel sulfur limits in this rule. The purpose of the proposed fuel program changes, as explained in Section II, is to modify a historical regulatory provision that may now have the unintended consequence of limiting flexibility for the distribution and sale in the United States of marine fuel that meets the sulfur limits for global marine fuel. Because there is no change to the fuel sulfur limits on fuels used in the United States, the proposed change is not expected to have an impact on U.S. air quality. However, by providing additional flexibility, the proposed change may reduce the costs of U.S. fuel suppliers providing global marine fuel that meets the MARPOL Annex VI global sulfur cap of 5,000 ppm, as explained below.

Under the regulations at 40 CFR part 80, marine distillate fuel with a T90 value below 700 °F is either Nonroad, Locomotive or Marine (NRLM) diesel fuel, limited to 15 ppm sulfur, or ECA marine fuel, limited to 1,000 ppm sulfur and can be used or made available for use only in engines on Category 3 vessels.[20] To comply with the 5,000 ppm global marine fuel standard, ship owners and operators can purchase residual fuels, distillate fuels, or mixtures of the two that fall below the 5,000 ppm cap.[21] EPA's existing regulations did not contemplate the potential for a distillate fuel being produced and distributed in the United States above 1,000 ppm, and therefore, to enhance the enforcement of our domestic fuel requirements, EPA's existing regulations preclude the distribution of higher sulfur distillate fuel in the United States. This limitation now hinders the ability of U.S. refiners to supply global marine fuel to the world market, as 1,000 ppm or lower distillate fuel may not be cost competitive with other 5,000 ppm sulfur options available. Ship owners and operators would likely choose to buy 5,000 ppm residual fuel or purchase their fuel in other countries rather than incur the additional cost of buying distillate marine fuel with less than 1,000 ppm sulfur in the United States. Rather than lose market share or absorb the price differential, we expect U.S. fuel providers to find ways within our regulations to supply the global marine fuel market, such as exporting higher sulfur distillate fuels and blending or using those fuels outside the United States; however, the inefficiency caused by our current limitation on distributing distillate fuel above 1,000 ppm will make it harder for U.S. fuel providers to competitively supply global marine fuel.

EPA does not have foreknowledge of the extent to which ship owners and operators would choose to use 5,000 ppm distillate fuel instead of residual fuel or distillate-residual fuel blends and cannot predict the extent to which ship owners and operators will be bunkering their vessels in the United States under the new global marine fuel standard. However, we can say with confidence that removing the restriction on the distribution of distillate fuel between 1,000 ppm and 5,000 ppm in the United States will provide greater flexibility for supplying the global marine fuel market and could therefore nominally reduce fuel costs. U.S. refiners have also requested that EPA make this regulatory change to provide clearly defined regulations that will provide a level playing field for all potential U.S. suppliers. Such clarity will aid them in finalizing their fuel supply and distribution plans.

We request comment on the extent to which this regulatory change might adjust U.S. fuel suppliers' decisions and actions to supply the global marine fuel market, the extent to which this action might help with overall global marine fuel supply, and what the associated costs, cost savings and other effects might be. We are interested in information that will shed light on measuring how behaviors may change relative to the U.S. baseline production plans (with no regulatory change), and what that baseline may be. For instance, would the relevant baseline be: (1) Distribution of distillate fuel with 1000 ppm sulfur limits in the U.S. for sale as a global marine fuel; (2) distribution of residual fuel with 5000 ppm sulfur limits in the U.S. for sale as a global marine fuel; (3) some combination of both approaches; or (4) some other approach? Such information would be used to assess the potential additional flexibility for U.S. fuel suppliers and the ships that use this fuel and the associated cost savings. Specifically, we request comment on the amount of 5,000 ppm distillate fuel that would be sold in the United States for use into the global marine fuel market with the proposed amendment, including price projections and other market specific information. While we recognize that the effects of the global 2020 IMO Standards are not attributable to this rule, we would be interested in further information related to this transition where such information is relevant for assessing the impacts of this proposed action on U.S. fuel suppliers.

VII. Statutory and Executive Order Reviews

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

This action was submitted to the Office of Management and Budget (OMB) for review.

[18] See EPA (2018). Technical Support Document: Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 17 Sectors. Office of Air and Radiation, Office of Air Quality Planning and Standards, Research Triangle Park, February.

[19] See, for example, the website for the Coalition for American Energy Security at *https://americanenergysecurity.com.*

[20] T90 refers to the point in a distillation process at which 90 percent of the fuel has evaporated.

[21] Under 40 CFR, residual fuel is a petroleum fuel that can only be used in diesel engines if it is preheated before injection.

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

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2602.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. OMB has previously approved the information collection activities related to marine diesel engine emission standards in 40 CFR part 1042 under OMB control number 2060–0287.

Information collection is limited to manufacturers of qualifying high-speed vessels requesting a waiver from the Tier 4 standards after the standards restart in model year 2024. We are adopting this as a precaution, in case engine certification and further technology development for installing Tier 4 engines does not allow for complying with standards in 2024. We will protect confidential business information as described in 40 CFR part 2.

Respondents/affected entities: Manufacturers of high-speed vessels.

Respondent's obligation to respond: Response is required to get EPA's approval for a waiver from Tier 4 standards.

Estimated number of respondents: 0.

Frequency of response: There are no recurring responses.

Total estimated burden: 0 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $0 per year, including $0 per year in annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 7, 2019. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule is expected to provide regulatory flexibility to small owners and operators of U.S. vessels. We have therefore concluded that this action will have no adverse regulatory impact for any directly regulated small 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. The action imposes no enforceable duty on any state, local, or tribal governments.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule will be implemented at the Federal level and affects owners and operators of U.S. vessels. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This action's assessment of the environmental impact of the rule contained in Section V shows that the rule will have a very small impact, which will not have a disproportionate effect on children's health.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Section V describes how we expect this rule to have a small overall environmental impact.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). Due to the small environmental impact, this proposed regulatory flexibility will not have a disproportionate adverse effect on minority populations, low-income populations, or indigenous peoples.

List of Subjects

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Greenhouse gases, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 1042

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

Dated: August 26, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth above, EPA proposes to amend 40 CFR parts 80 and 1042 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

■ 2. Section 80.2 is amended by adding paragraph (aa) to read as follows:

§ 80.2 Definitions.

* * * * *

(aa) *Global marine fuel* means diesel fuel, distillate fuel, or residual fuel used, intended for use, or made available for use in steamships or Category 3 marine vessels while the vessels are operating in international waters or in any waters outside the boundaries of an ECA. Global marine fuel is subject to the provisions of MARPOL Annex VI.

* * * * *

■ 3. Section 80.501 is amended by redesignating paragraphs (a)(6) and (7) as paragraphs (a)(7) and (8), and adding a new paragraph (a)(6) to read as follows:

§ 80.501 What fuel is subject to the provisions of this subpart?

(a) * * *

(6) Distillate global marine fuel.

* * * * *

■ 4. Section 80.590 is amended by revising the section heading and paragraph (a) introductory text and adding paragraph (a)(7)(viii) to read as follows:

§ 80.590 What are the product transfer document requirements for motor vehicle diesel fuel, NRLM diesel fuel, heating oil, global marine fuel, ECA marine fuel, and other distillates?

(a) This paragraph (a) applies on each occasion that any person transfers custody or title to MVNRLM diesel fuel, heating oil, global marine fuel, or ECA marine fuel (including distillates used or intended to be used as MVNRLM diesel fuel, heating oil, global marine fuel, or ECA marine fuel) except when such fuel is dispensed into motor vehicles or nonroad equipment, locomotives, marine diesel engines or steamships or Category 3 vessels. Note that 40 CFR part 1043 specifies requirements for documenting fuel transfers to certain marine vessels. For all fuel transfers subject to this paragraph (a), the transferor must provide to the transferee documents which include the following information:

* * * * *

(7) * * *

(viii) *Global marine fuel.* ''For use only in steamships or Category 3 marine vessels outside of an Emission Control Area (ECA), consistent with MARPOL Annex VI.''

* * * * *

■ 5. Section 80.598 is amended by revising paragraphs (a)(2)(i)(G) and (b)(8)(iii) to read as follows:

§ 80.598 What are the designation requirements for refiners, importers, and distributors?

(a) * * *

(2) * * *

(i) * * *

(G) Exempt distillate fuels such as global marine fuels under § 80.605, fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

(b) * * *

(8) * * *

(iii) Exempt distillate fuels such as global marine fuels under § 80.605, fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

■ 6. Amend § 80.602 by revising the section heading and paragraphs (a) and (b)(4)(i) to read as follows:

§ 80.602 What records must be kept by entities in the NRLM diesel fuel, ECA marine fuel, global marine fuel, and diesel fuel additive production, importation, and distribution systems?

(a) *Records that must be kept by parties in the NRLM diesel fuel, ECA marine fuel, global marine fuel and diesel fuel additive production, importation, and distribution systems.* Beginning June 1, 2007, or June 1, 2006, if that is the first period credits are generated under § 80.535, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports nonroad, locomotive or marine diesel fuel, or ECA marine fuel (beginning June 1, 2014) subject to the provisions of this subpart, must keep all the records specified in this paragraph (a). These recordkeeping requirements for global marine fuel start January 1, 2020.

(1) The applicable product transfer documents required under §§ 80.590 and 80.591.

(2) For any sampling and testing for sulfur content for a batch of NRLM diesel fuel produced or imported and subject to the 15 ppm sulfur standard or any sampling and testing for sulfur content of any fuel subject to the provisions of this subpart as part of a quality assurance testing program, and any sampling and testing for cetane index, aromatics content, marker solvent yellow 124 content or dye solvent red 164 content of NRLM diesel fuel, ECA marine fuel, NRLM diesel fuel additives or heating oil:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the testing; and

(iii) The results of the tests for sulfur content (including, where applicable, the test results with and without application of the adjustment factor under § 80.580(d)), for cetane index or aromatics content, dye solvent red 164, marker solvent yellow 124 (as applicable), and the volume of product in the storage tank or container from which the sample was taken.

(3) The actions the party has taken, if any, to stop the sale or distribution of any NRLM diesel fuel, global marine fuel, or ECA marine fuel found not to be in compliance with the sulfur standards specified in this subpart, and the actions the party has taken, if any, to identify the cause of any noncompliance and prevent future instances of noncompliance.

(b) * * *

(4) * * *

(i) NRLM diesel fuel, NR diesel fuel, LM diesel fuel, global marine fuel, ECA marine fuel, or heating oil, as applicable.

* * * * *

■ 7. Section 80.605 is added to read as follows:

§ 80.605 Global marine fuel exemption.

(a) The standards of this subpart I do not apply to global marine fuel that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in steamships or Category 3 marine vessels when operating outside of ECA boundaries.

(b) The exempt fuel must meet all the following conditions:

(1) It must not exceed 0.50 weight percent sulfur ($5.0 \cdot 10^3$ ppm).

(2) It must be accompanied by product transfer documents as required under § 80.590.

(3) It must be designated as specified under § 80.598.

(4) It must be segregated from non-exempt fuel at all points in the distribution system.

(5) It may not be used in any vehicles, engines, or equipment other than those referred to in paragraph (a) of this section.

(c) Fuel not meeting the conditions specified in paragraph (b) of this section is subject to the standards, requirements, and prohibitions that apply for MVNRLM diesel fuel. Similarly, any person who produces, imports, sells, offers for sale, supplies, offers for supply, stores, dispenses, or transports global marine fuel without meeting the recordkeeping requirements under § 80.602 may not claim the fuel is exempt from the standards, requirements, and prohibitions that apply for MVNRLM diesel fuel.

PART 1042—CONTROL OF EMISSIONS FROM NEW AND IN-USE MARINE COMPRESSION-IGNITION ENGINES AND VESSELS

■ 8. The authority citation for part 1042 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 9. Section 1042.145 is amended by adding paragraphs (k) through (o) to read as follows:

§ 1042.145 Interim provisions.

* * * * *

(k) *Adjusted implementation dates for Tier 4 standards.* Engines and vessels may qualify for delaying the Tier 4 standards specified in § 1042.101 as follows:

(1) The delay is limited to model year 2021 and earlier engines and vessels that meet all the following characteristics:

(i) Category 1 propulsion engines with specific power density above 35.0 kW/liter, up to maximum engine power of 1,400 kW.

(ii) Vessels have total propulsion power at or below 2,800 kW.

(iii) Vessel length is at or below 65 feet.

(iv) Vessels qualify as uninspected vessels under 46 CFR 2.01–7.

(v) Vessels have a maximum speed (in knots) at or above $3.0 \bullet L^{1/2}$, where L is the vessel's waterline length, in feet.

(2) The delay also applies for model years 2022 and 2023 for engines and vessels that meet all the following characteristics:

(i) Category 1 propulsion engines with specific power density above 40.0 kW/liter, up to maximum engine power of 1,000 kW.

(ii) Vessels have total propulsion power at or below 1,000 kW.

(iii) Vessel length is at or below 50 feet.

(iv) Vessels qualify as uninspected vessels under 46 CFR 2.01–7.

(v) Vessels have a maximum speed (in knots) at or above $3.0 \bullet L^{1/2}$, where L is the vessel's waterline length, in feet.

(vi) Vessels have fiberglass or other nonmetal hulls.

(3) Affected engines must instead be certified to the appropriate Tier 3 emission standards specified in § 1042.101. Engine manufacturers may include engine configurations with maximum engine power below 600 kW in the same engine family even if the power density is below the value specified in paragraph (k)(1) or (2) of this section.

(4) If you introduce an engine into U.S. commerce under this section, you must meet the labeling requirements in § 1042.135, but add the following statement instead of the compliance statement in § 1042.135(c)(10):

THIS MARINE ENGINE COMPLIES WITH U.S. EPA TIER 3 EMISSION STANDARDS UNDER 40 CFR 1042.145(k). ANY OTHER INSTALLATION OR USE OF THIS ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(l) [Reserved]

(m) *Tier 4 waiver.* Starting in model year 2024, vessel manufacturers may request an exemption from the Tier 4 standards as follows:

(1) The subject vessels and engines must meet the qualifications of paragraph (k)(2) of this section.

(2) Vessel manufacturers must send a written request for the exemption to the Designated Compliance Officer. The request must describe efforts taken to identify available engines certified to the Tier 4 standards and design efforts for installing engines in the subject vessels. The request must also identify the number of vessels needing exempt engines. We will approve exemption requests demonstrating that there is no suitable engine certified to the Tier 4 standards and that engine and vessel manufacturers will meet all the terms and conditions that apply.

(3) Engine manufacturers may ship exempt engines under this paragraph (m) only after receiving a written request from a vessel manufacturer who has received our approval to build a specific number of vessels. The prohibitions in § 1068.101(a)(1) do not apply to a new engine that is subject to Tier 4 standards, subject to the following conditions:

(i) The engine meets the appropriate Tier 3 emission standards in § 1042.101 consistent with the provisions specified in § 1068.265 of this chapter.

(ii) The engine is installed on a vessel consistent with the conditions of this paragraph (m).

(iii) The engine meets the labeling requirements in § 1042.135, with the following statement instead of the compliance statement in § 1042.135(c)(10):

THIS MARINE ENGINE DOES NOT COMPLY WITH CURRENT U.S. EPA EMISSION STANDARDS UNDER 40 CFR 1042.145(m). ANY OTHER INSTALLATION OR USE OF THIS ENGINE MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(n) *Assigned deterioration factors.* Engine manufacturers may use assigned deterioration factors for certifying Tier 4 engines with maximum power up to 1,400 kW, as follows:

(1) For engine families that have at least one configuration with maximum engine power at or below 1,400 kW and power density above 40.0 kW/liter, you may use assigned deterioration factors through model year 2023.

(2) For engine families that have at least one configuration with maximum engine power at or below 1,000 kW and power density above 35.0 kW/liter, you may use assigned deterioration factors through model year 2025.

(3) The assigned deterioration factors are multiplicative values of 1.1 for NO_X and 1.4 for HC and CO, and an additive value of 0.003 g/kW-hr for PM, unless we approve your request to use different values. We will approve your proposed values if you demonstrate that they better represent your engines based on data from similar engines you have certified.

(o) *Useful life for light-commercial engines.* Commercial Category 1 engines at or above 600 kW with power density above 50.0 kW/liter are subject to the exhaust emission standards of this part over a full useful life of 10 years or 5,000 hours of operation instead of the useful-life values specified in § 1042.101(e).

[FR Doc. 2019–19092 Filed 9–5–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 382, 383 and 384

[Docket No. FMCSA–2019–0120]

RIN 2126–AC32

Extension of Compliance Date for States' Query of the Drug and Alcohol Clearinghouse

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking; extension of compliance date.

SUMMARY: FMCSA proposes to extend the compliance date for the requirement established by the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) final rule that States request information from the Clearinghouse (''query'') before completing certain commercial driver's license (CDL) transactions. The States' compliance with this requirement, currently due to begin on January 6, 2020, would be delayed until January 6, 2023. This proposal would, however, allow States the option to voluntarily request Clearinghouse information beginning on January 6, 2020. As explained further below, the proposed delay of the State query requirement would have no impact on highway safety. The compliance date of January 6, 2020 would remain in place for all other requirements set forth in the Clearinghouse final rule.

DATES: Comments on this document must be received on or before October 7, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2019–0120 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Nikki McDavid, Chief, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 by telephone at 202–366–0831 or by email, *nikki.mcdavid@dot.gov.,* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice of proposed rulemaking (NPRM) (Docket No. FMCSA–2019–0120), indicate the specific section of this document to which each section applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2019–0120, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2019–0120, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

D. Waiver of Advance Notice of Proposed Rulemaking

Under the Fixing America's Surface Transportation Act, Public Law, 114–94 (FAST Act), FMCSA is required to publish an advance notice of proposed

rulemaking (ANPRM) or conduct a negotiated rulemaking ''if a proposed rule is likely to lead to the promulgation of a major rule'' (49 U.S.C. 31136(g)(1)). As this proposed rule is not likely to lead to the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

II. Executive Summary

A. Purpose and Summary of the Proposed Rule

Regulations established by the final rule, ''Commercial Driver's License Drug and Alcohol Clearinghouse'' (Clearinghouse final rule) (81 FR 87686 (Dec. 5, 2016)), require that, beginning January 6, 2020, State Driver Licensing Agencies (SDLAs) request information from the Clearinghouse (''query'') prior to issuing, renewing, upgrading, or transferring a CDL.[1] The Clearinghouse final rule did not otherwise address how SDLAs would use Clearinghouse information for drivers licensed, or seeking to become licensed, in their State. This proposed delay of the States' query requirement, from January 6, 2020 to January 6, 2023, is necessary to allow the Agency time to complete its forthcoming rulemaking to address the SDLAs' access to and use of driver-specific information from the Clearinghouse, as discussed below.

FMCSA emphasizes that the compliance date of January 6, 2020, continues to apply to all other requirements set forth in the Clearinghouse final rule. Beginning January 6, 2020, CDL holders' drug and alcohol testing program violations must be reported to the Clearinghouse, and motor carrier employers must perform the required queries for prospective and current driver-employees.

In addition, under this proposal, beginning on January 6, 2020, SDLAs wishing to access a CDL applicant's drug or alcohol violation information *may* do so by registering in the Clearinghouse as an authorized user and logging in to view the individual's record. This optional access to the Clearinghouse would be exercised solely at the States' discretion. FMCSA will provide operational guidance on Clearinghouse registration for all authorized users in the coming weeks.

B. Costs and Benefits

Because the Clearinghouse final rule did not establish a cost or benefit to the SDLA query, there are neither costs nor benefits associated with this rulemaking.

[1] See 49 CFR 383.73(b)(10); (c)(10); (d)(9); (e)(8); and (f)(4).

III. Legal Basis for the Rulemaking

This NPRM would amend regulations established by the Clearinghouse final rule by extending the date by which States would be required to achieve compliance with the query requirements currently set forth in 49 CFR 383.73 and 384.235. The Clearinghouse final rule implements section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–41, 126 Stat. 405, codified at 49 U.S.C. 31306a), which requires the Secretary of Transportation (the Secretary) to establish a national clearinghouse for records related to drug and alcohol testing of CDL holders. As part of that mandate, MAP–21 requires the Secretary to establish a process by which States can request and receive an individual's Clearinghouse record (49 U.S.C. 31306a(h)(2)). In addition, section 32305(b)(1) of MAP–21, codified at 49 U.S.C. 31311(a)(24), requires that States request information from the Clearinghouse prior to issuing or renewing a CDL. This proposed extension of the compliance date for those State-specific requirements relies on these statutory authorities. This NPRM is also based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986, as amended, codified generally in 49 U.S.C. chapter 313, which requires the Secretary to establish minimum standards for the issuance of CDLs (49 U.S.C. 31308), as well as minimum standards to ensure the fitness of individuals operating a CMV (49 U.S.C. 31305(a)).

Finally, under 49 CFR 1.87(e)(1), the FMCSA Administrator is delegated authority to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313, relating to CMV operation.

IV. Background

The Clearinghouse final rule implemented the Congressional mandate, set forth in section 32402 of MAP–21, requiring the establishment of a national Drug and Alcohol Clearinghouse containing CDL holders' violations of FMCSA's drug and alcohol testing regulations set forth in 49 CFR part 382. The Clearinghouse regulations, which go into effect on January 6, 2020, will enable FMCSA and motor carrier employers to identify drivers who, under 49 CFR 382.501(a), are prohibited from operating a CMV due to drug and alcohol program violations.

Additionally, as discussed above in section III. ''Legal Basis,'' MAP–21 required that SDLAs be provided access to the Clearinghouse records of individuals applying for a CDL in order to determine whether they are qualified to operate a CMV, and that SDLAs request information from the Clearinghouse before renewing or issuing a CDL to an individual. FMCSA incorporated these statutory requirements into the Clearinghouse final rule.

Subsequently, the American Association of Motor Vehicle Administrators (AAMVA), a trade association representing driver licensing authorities from the 50 States and the District of Columbia, asserted that the final rule failed to address various operational issues related to the States' role in the Clearinghouse.[2] Some of the concerns AAMVA raised were: What does FMCSA intend that the States do with information they receive from the Clearinghouse; what specific information would States receive in response to a request for information about an individual CDL holder or applicant; what privacy and data controls will be applied to the transmission of Clearinghouse information to SDLAs; how would an erroneous Clearinghouse record be corrected; and what are the cost implications for the SDLAs.

As discussed further below, the Agency intends to publish a separate proposed rule (''Clearinghouse II NPRM''), which will specifically address the issues raised by AAMVA. Delaying the implementation of the query requirement would provide FMCSA additional time to resolve AAMVA's concerns and ensure a seamless implementation of the States' Clearinghouse-related requirements.

V. Discussion of Notice of Proposed Rulemaking (NPRM)

As noted above, regulations established by the 2016 Clearinghouse final rule require that, beginning on January 6, 2020, States query the Clearinghouse prior to issuing, renewing, transferring, or upgrading a CDL. FMCSA proposes to extend that compliance date, *only as it applies to the States' query requirement,* to January 6, 2023. All other provision of the Clearinghouse final rule will go into effect on January 6, 2020. Extending the compliance date at this time would provide sufficient notice to the States that the query requirement will not take effect on January 6, 2020, thereby permitting them to allocate their information technology (IT), training, and other resources accordingly.

[2] *See* AAMVA Petition for Reconsideration of the Commercial Driver's License Drug and Alcohol Clearinghouse Final Rule (June 29, 2017), Docket No. FMCSA–2011–0031, accessible through *www.regualtions.gov.*

In the Agency's judgment, it would be premature to implement the States' query requirement before addressing the questions and concerns raised by AAMVA in its 2017 petition for reconsideration, discussed above in section IV, ''Background.'' FMCSA therefore proposes this extension so that it can address the States' use of Clearinghouse information, and respond to the issues raised by AAMVA, which will be the basis of the Clearinghouse II NPRM. Further, the Clearinghouse II NPRM will solicit the States' input concerning the most efficient means of electronically transmitting the information from the Clearinghouse to the SDLAs. Thus, the additional time afforded by extending the compliance date for the States' query requirement, as proposed, is also necessary for FMCSA to establish the IT interface between the SDLAs and the Clearinghouse.

FMCSA anticipates that the Clearinghouse II NPRM will be published no later than March 1, 2020. The Agency notes that, due to the delay in issuing the Clearinghouse II NPRM, this proposal to extend the compliance date to January 6, 2023, is essentially a placeholder; the final rule resulting from the Clearinghouse II proposal will establish the date by which States' compliance will ultimately be required. The Agency does not anticipate that the final compliance date will be sooner than January 6, 2023.

Although, under this proposal, SDLAs would not be required to query the Clearinghouse beginning on January 6, 2020, some SDLAs may nevertheless want to request information about a CDL applicant as soon as the information starts to become available in the Clearinghouse. Accordingly, FMCSA proposes that, beginning on January 6, 2020, SDLAs wishing to request information from the Clearinghouse may do so on a voluntary basis by logging in as a registered user and conducting a query prior to issuing, renewing, transferring or upgrading a CDL. The Agency recognizes that manually-conducted queries for large numbers of drivers could pose logistical and operational challenges, and will explore more efficient means of providing driver information to SDLAs wishing to request information from the Clearinghouse on a voluntary basis.[3] If Clearinghouse information received in response to a voluntary query by an SDLA indicates the driver is prohibited from operating a CMV due to a drug or alcohol testing violation, it would be up to the State to decide whether, and how, to act on that information.

Finally, FMCSA concludes that the delayed implementation of the SDLAs' query requirement, as proposed, would not impact highway safety. The Clearinghouse final rule required only that SDLAs query the Clearinghouse prior to completing specified commercial licensing transactions. However, there is currently no requirement that States act on Clearinghouse information indicating the driver is prohibited from operating a CMV because the individual violated FMCSA's drug and alcohol program requirements. Consequently, the Regulatory Impact Analysis for the Clearinghouse final rule[4] did not associate any specific safety benefit with the SDLAs' mandatory query of the Clearinghouse, although the Agency did identify quantitative and qualitative benefits for the Clearinghouse final rule as a whole.

VI. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

VII. Section-by-Section Analysis

A. Proposed Change to 49 CFR 382.725

FMCSA proposes to amend § 382.725(a) to permit States to request information from the Clearinghouse before January 6, 2023, and to require that States request information from the Clearinghouse on or after January 6, 2023.

B. Proposed Changes to 49 CFR Parts 383 and 384

In parts 383 and 384, FMCSA proposes to amend §§ 383.73(b)(10), (c)(10), (d)(9), (e)(8), and (f)(4), and 384.235, by changing the date from January 6, 2020, to January 6, 2023.

VIII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

Under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, this proposed rule does not require an assessment of potential costs and benefits under section 6(a)(4) of that Order. This proposed rule is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6, dated Dec. 20, 2018). Accordingly, the Office of Management and Budget has not reviewed it under these Orders. Because the Clearinghouse final rule did not establish a cost or benefit for the SDLA query, there are neither costs nor benefits associated with this rulemaking.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

This rule has been designated as a deregulatory action under Executive Order (E.O.) 13771 by the Office of Information and Regulatory Affairs because it delays a compliance date for a requirement.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat 857) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen the adverse effects on these businesses.

As described above, the Clearinghouse final rule requires the SDLAs to query the Clearinghouse before completing certain licensing transactions. This proposal would extend the Clearinghouse final rule compliance extended from January 6, 2020 to January 6, 2013. The extension of the compliance date is limited to the

[3] The Clearinghouse final rule discussed the possible use of the Commercial Driver Licensing Information System (CDLIS) pointer system or other automated electronic means of transmitting Clearinghouse information to the SDLAs. *See* 81 FR 87866, 87708 (Dec. 5, 2016).

[4] The Final Rulemaking Regulatory Impact Analysis (November 2016) is available in the docket of the ELDT final rule (Docket No. FMCSA–2011–0031), accessible through *www.regualtions.gov.*

SDLAs. The proposed extension does not impose costs on the SDLAs.

The regulatory flexibility analysis the Agency prepared for the Clearinghouse final rule did not include the SDLAs among the small entities affected by the rule because they are a governmental entity with a population of greater than 50,000. That determination, combined with the fact that the SDLAs are the only entity affected by the proposed extension of the compliance date, and no costs would be imposed on the SDLAs demonstrates that the proposed rule does not have a significant impact on small entities. Consequently, I certify the action will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this NPRM so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Ms. Nikki McDavid, listed in the **FOR FURTHER INFORMATION CONTACT** section of this NPRM. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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. 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 $161 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2017 levels) or more in any one year. This proposed rule would not result in such an expenditure. As discussed above, FMCSA estimates the NPRM would result in costs less than zero.

F. Paperwork Reduction Act

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of Executive Order 13132 if it has ''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.'' FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism impact statement.

H. E.O. 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The Agency will complete a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA will be submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. Environment

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (6)(t)(2). The Categorical Exclusion (CE) in paragraph (6)(t)(2) covers regulations ensuring States comply with the provisions of the Commercial Motor Vehicle Act of 1986, by having the appropriate information technology systems concerning the qualification and licensing of persons who apply for and persons who are issued a CDL. The proposed requirements in this rule are covered by this CE, and the proposed action does not have the potential to significantly affect the quality of the environment. The CE determination is available for inspection or copying in the regulations.gov website listed under **ADDRESSES**.

Q. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This proposed rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

List of Subjects

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Parts 383 and 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 2. Amend § 382.725 by revising paragraph (a) to read as follows:

§ 382.725 Access by State licensing authorities.

(a)(1) Before January 6, 2023, in order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State may obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(2) On or after January 6, 2023, in order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

* * * * *

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 3. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 5103a, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 stat. 405, 830; and 49 CFR 1.87.

§ 383.73 [Amended]

■ 4. Amend § 383.73 by removing the date ''January 6, 2020'' and adding in its place the date ''January 6, 2023'' in paragraphs (b)(10), (c)(10), (d)(9), (e)(8), and (f)(4).

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 5. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31102, 31104, 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

§ 384.235 [Amended]

■ 6. Amend § 384.235 by removing the date ''January 6, 2020'' and adding in its place the date ''January 6, 2023.''

Issued under authority delegated in 49 CFR 1.87.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–18986 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

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 a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on three petitions to add species to the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act), or to revise the critical habitat designation for a listed species. Based on our review, we find that of the two petitions to add species to the list, one presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate a review of the status of Mojave poppy bee (*Perdita meconis*) to determine whether the petitioned action is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding that species. Based on the status review, we will issue a 12-month petition finding, which will address whether or

not the petitioned action is warranted, in accordance with the Act. We find that the second petition to add a species to the list 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 Yellowstone National Park bison (population of *Bison bison bison*) in response to the petition. We refer to this finding as a ''not substantial'' petition finding. Lastly, we find that the third petition—a petition to revise the critical habitat designation for the currently listed Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*)—presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we announce that we plan to determine how we will proceed with the request to revise a critical habitat designation for the species.

DATES: These findings were made on September 6, 2019. As we commence work on the status review, we seek any new information concerning the status of, or threats to, the species or its habitat. Any information received during our work on the status review will be considered.

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 table 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 review and critical habitat review: If you have new scientific or commercial data or other information concerning the status of, or threats to, the species for which we are initiating a status review, or information concerning the critical habitat of the species for which we are initiating a review of the critical habitat designation, 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 Tables 1 and 2 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 Tables 1 and 2 under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: JAO/1N, 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: A summary of the basis for the not-substantial petition finding contained in this document is available on *http://www.regulations.gov* under the appropriate docket number (see Table 3 under **SUPPLEMENTARY INFORMATION**). This supporting information is also available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. 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.

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Mojave poppy bee	Glen Knowles, 702–515–5230; *glen_knowles@fws.gov*
Mount Graham red squirrel	Jeff Humphrey, 602–242–0210; *jeff_humphrey@fws.gov*
Yellowstone National Park bison	Marjorie Nelson, 303–236–4258; *marjorie_nelson@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, as well as for designating and revising critical habitat for listed species.

For Petitions To Add or Remove Species From the Lists, or Change the Listed Status of a Species

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 (''list'' a species), remove a species from the Lists (''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (''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**.

For petitions to add, remove, or reclassify a species, 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. 1531 *et seq.*). 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 or the effects of 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 to add, remove, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires us to 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).

For Petitions To Revise Critical Habitat

Section 4(b)(3)(D) of the Act requires that we make a finding on whether a petition to revise a critical habitat designation 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**.

For petitions to revise critical habitat, 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 revision proposed in the petition may be warranted'' (50 CFR 424.14(i)(1)(i)).

In determining whether a revision of critical habitat may be warranted, we may consider the following:

(1) Areas that the current designation does not include that should be included, or includes that should no longer be included, and any benefits of designating or not designating these specific areas as critical habitat;

(2) The physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

(3) For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas contain one or more of the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species, or that these features do not require special management considerations or protection;

(4) For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species, or that these features do not require special management considerations or protection; and

(5) For areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species.

If we find that a petition to revise critical habitat presents substantial scientific or commercial information indicating that the requested revision may be warranted, section 4(b)(3)(D)(ii) of the Act requires us to determine how to proceed with the requested revision.

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 REVIEW

Common name	Docket No.	URL to docket on *http://www.regulations.gov*
Mojave poppy bee	FWS–R8–ES–2019–0083	*https://www.regulations.gov/docket?D=FWS-R8-ES-2019-0083*

TABLE 2—CRITICAL HABITAT REVIEW

Common name	Docket No.	URL to docket on *http://www.regulations.gov*
Mount Graham red squirrel	FWS–R2–ES–2019–0084	*https://www.regulations.gov/docket?D=FWS-R2-ES-2019-0084*

TABLE 3—NOT-SUBSTANTIAL PETITION FINDING

Common name	Docket No.	URL to docket on *http://www.regulations.gov*
Yellowstone National Park bison	FWS–R6–ES–2019–0085	*https://www.regulations.gov/docket?D=FWS-R6-ES-2019-0085*

Evaluation of a Petition To List the Mojave Poppy Bee

Species and Range

Mojave poppy bee (*Perdita meconis*); Nevada.

Petition History

On October 17, 2018, we received a petition from the Center for Biological Diversity, requesting that the Mojave poppy bee be listed as endangered and that 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 Mojave poppy bee due to potential threats associated with the following: grazing, recreation, and gypsum mining (Factor A); and competition with nonnative honey bees (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–R8–ES–2019–0083 under Supporting Documents.

Evaluation of a Petition To Revise the Critical Habitat Designation for the Mount Graham Red Squirrel

Species and Range

Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*); Arizona.

Petition History

On December 14, 2017, we received a petition from the Center for Biological Diversity requesting that critical habitat for the Mount Graham red squirrel be revised 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

The Mount Graham red squirrel is a small, grayish-brown arboreal subspecies that is tinged rusty or yellowish along the back and occurs in high-elevation forests down to approximately 7,500 feet (2,286 meters) in the Pinaleño Mountains, Graham County, Arizona. On January 5, 1990, we published a final rule in the **Federal Register** (55 FR 425) designating critical habitat in three units of dense stands of mature spruce-fir forest, for a total of about 2,000 acres (800 hectares).

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 revising critical habitat for the Mount Graham red squirrel may be warranted. Our conclusion is based primarily on new information indicating significant changes to the forest currently designated as critical habitat and regarding the squirrel's use of habitat previously considered to be of lesser importance.

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–2019–0084 under Supporting Documents.

Evaluation of a Petition To List the Yellowstone National Park Bison

Species and Range

Plains bison (population of *Bison bison bison*); in and around Yellowstone National Park in Idaho, Montana, and Wyoming.

Petition History

On November 14, 2014, we received a petition from Western Watersheds Project and Buffalo Field Campaign, requesting that Plains bison in and around Yellowstone National Park (Yellowstone National Park bison) be listed as an endangered or threatened distinct population segment (DPS) under the Act (first petition). The first petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). On March 2, 2015, we received a second petition from James Horsley, which also requested that Yellowstone National Park bison be listed as endangered or threatened under the Act (second petition). On January 12, 2016, we published a 90-day finding in the **Federal Register** (81 FR 1368) concluding that the two petitions did not provide substantial scientific or commercial information indicating that the petitioned actions may be warranted. On September 26, 2016, petitioners from the first petition, along with a third party (Friends of Animals), brought suit under the Endangered Species Act and the Administrative Procedure Act asserting that our determination was arbitrary and capricious. On January 31, 2018, the Court remanded the case for the Service to conduct a new 90-day finding. On March 16, 2018, we received a new petition from James Horsley, requesting emergency listing for Yellowstone National Park bison (third petition). The third 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 all three petitions.

Finding

Based on our review of the petitions and sources cited in the petitions, we find that the petitions do not present substantial scientific or commercial information indicating the petitioned action may be warranted for Yellowstone National Park bison. Because the petitions do not present substantial information indicating that listing Yellowstone National Park bison may be warranted, we are not initiating a status review of this species in response to the petitions. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, the Yellowstone National Park bison or its habitat at any time (see *Not-substantial petition finding* under **ADDRESSES**, above).

The basis for our finding on these petitions, and other information regarding our review of the petitions, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2019–0085 under Supporting Documents.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) and 4(b)(3)(D)(i) of the Act, we have determined that the petitions summarized above for the Mojave poppy bee and Mount Graham red squirrel present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating a status review of the Mojave poppy bee to determine whether the action is warranted under the Act. At the conclusion of the status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned action is 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 are initiating a review of the critical habitat designation for the Mount Graham red squirrel to determine whether revising the designation is warranted. At the conclusion of the review, we will issue a finding, in accordance with section 4(b)(3)(D)(ii) of the Act, and we will determine how to proceed.

Lastly, we have determined that the petitions summarized above for Yellowstone National Park bison do not present substantial scientific or commercial information indicating that the requested action may be warranted. Therefore, we are not initiating a status review for Yellowstone National Park bison.

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 29, 2019.

Stephen Guertin,

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–19226 Filed 9–5–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 84, No. 173

Friday, September 6, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities: Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Notice of information collection.

SUMMARY: U.S. Agency for International Development (USAID), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to review and comment on the following new information collection, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning; whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility for managing USAID's Exchange Visitor program; the accuracy of USAID's estimate of the burden of the proposed collection of information; suggestions on how s to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed information collection to Ethel Brooks, USAID, Bureau of Economic Growth, Education and Environment (E3)/Office of Education at *ebrooks@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Ethel Brooks, USAID, Bureau of Economic Growth, Education and Environment (E3)/Office of Education at *ebrooks@usaid.gov* or 202–712–4226.

SUPPLEMENTARY INFORMATION:

I. Abstract

In support of its development objectives and aim for self-reliance, USAID sponsors U.S.-based education and capacity strengthening programs for host country nationals, referred to as the Exchange Visitor (EV) Program. Exchange Visitors travel to the United States under a J–1 visa.

The USAID Bureau of Economic Growth, Education, and Environment, Office of Education (E3/ED) manages the Agency's J–1 visa designation and ensures the Agency's compliance with Department of Homeland Security (DHS) and Department of State (DoS) regulations contained in 22 CFR 62.1–90. The Office of Education collects Exchange Visitor data from USAID's overseas Missions and Implementers, and manages the Agency's EV approval process. USAID relies on data to fulfill a mandatory Agency function of providing the DHS, including Immigration and Customs Enforcement (ICE), and the DoS with information about host country nationals who study in the U.S. under USAID sponsorship. The referenced bio data forms are used to collect such data. The forms include a section for collecting data about the individuals': (a) Suitability for USAID sponsorship; (b) agreed upon commitment to return to the home country and use their newly acquired skills to help solve local development problems; (c) agreement to reimburse program costs if they fail to comply with USAID's and other U.S. Government Agencies Policy requirements; and (d) certification of dependents who accompany or visit EVs during their study in the U.S. USAID/Washington and Missions also use the data collected through these forms to monitor program performance and program completion, along with other management interventions. The main purpose is to enable the transfer of effective education and capacity interventions to host country governments while supporting U.S. national interests. The secondary purpose is to improve future planning and use of USAID resources. These objectives are aligned with Congressional requirements under the Foreign Assistance Act of 1961, as amended. They are also closely aligned with objectives of the Journey to Self-Reliance for countries where USAID operates.

II. Method of Collection

Electronic.

III. Data

Title: USAID program compliance and management information, including Conditions of Sponsorship for U.S. Activities; Exchange Visitors Biographical Data; Dependent Certification; Cost Repayment; and Conditions of Sponsorship for Third Country Training forms.

OMB Number: Not assigned.

Expiration Date: Three years from issuance date.

Type of Request: Forms Renewal.

Affected Public: Host country nationals whose study in the U.S. is funded by USAID.

Estimated Total Number of Affected Individual per Year: 1,500–2,000

Estimated Total Annual Burden: Less than 15 minutes per form, per person. Most forms are prepared only once at the inception of the EV's program and the form remains valid for the duration of the program. *Note:* The use of forms is situational, not all forms apply to every individual. For example, the Cost Repayment Form applies only to the small number of individuals who overstay their authorized time in the U.S. after completing their studies.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the compliance and management of USAID-funded Exchange Visitor program; (2) the accuracy of USAID's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. The comments will also become a matter of public record.

Stephen Kowal,

Deputy Director, Office of Education, U.S. Agency for International Development.

[FR Doc. 2019–19233 Filed 9–5–19; 8:45 am]

BILLING CODE 6116–02–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: U.S. Agency for International Development.

ACTION: Notice of information collection.

SUMMARY: U.S. Agency for International Development (USAID), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of the information on the respondents.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed information collection to Jennifer Cupp, USAID, Bureau for Food Security, at *jcupp@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Cupp, USAID, Bureau for Food Security, *jcupp@usaid.gov.*

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

OMB No. ###

Information Collection Request Title: U.S. Government Feed the Future Initiative Audience Segmentation Survey.

Abstract: The ''USAID National Survey of U.S. Adults about Global Food Security'' is a 20-minute nationally-representative survey of U.S. adults conducted for USAID by a professional research company. The purpose of the research is to inform the communications strategy, education, and outreach efforts for the Feed the Future Initiative. The research contractor will gather information and feedback by telephone and online from 1,000 voluntary adult participants using a nationally representative survey sampling method. Using the information collected in the survey, the research consultant will measure opinions about global food security and hunger, program awareness, reasons for improving global food security and reducing hunger, questions and concerns about the initiative, as well as consumer segments and insights for each segment to more effectively hone communication, education and outreach efforts.

Likely Respondents: This study includes one respondent group, U.S. adults 18 years and older living in the fifty states and the District of Columbia.

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 and survey screening criteria; to develop, acquire, install and utilize technology and systems for the purpose of providing opinions and feedback; to be able to respond to and complete the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated are summarized in the table below.

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
Feed the Future Initiative Audience Segmentation	1,000	1	1,000	.333	333
Screened households	1,200	1	1,200	.0167	20.04
Total			3,200		353.04

USAID 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 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.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. The comments will also become a matter of public record.

Dated: July 31, 2019.

Jennifer Cupp,

Communications Director, Feed the Future, U.S. Agency for International Development.

[FR Doc. 2019–19209 Filed 9–5–19; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

30-Day Notice of Proposed Information Collection: Partner Information Form (PIF)

AGENCY: U.S. Agency for International Development.

ACTION: Notice of request for public comment.

SUMMARY: The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, USAID requests public comment on this collection from all interested individuals and organizations. This proposed information collection was published in the **Federal Register** on June 17, 2019, allowing for a 60-day public comment period. No comments were received regarding the **Federal Register** Notice. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments must be received no later than October 7, 2019.

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

1. *Email: OIRA_Submission@omb.eop.gov.* You must include the

form number, title of information collection, and OMB control number in the subject line of your message.

2. *Mail, Hand Delivery, or Courier:* Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Colleen Allen at (202) 712–0378, via email at *rulemaking@usaid.gov,* or via mail at USAID, Bureau for Management, Office of Management Policy, Budget, and Performance (M/MPBP), 1300 Pennsylvania Avenue NW, Washington, DC

SUPPLEMENTARY INFORMATION:

This agency information collection previously published at 84 FR 28000.

Overview of Information Collection

- *Agency:* U.S. Agency for International Development (USAID).
- *Title of Information Collection:* Partner Information Form.
- *OMB Control Number:* 0412–0577.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau for Management, Office of Management Policy, Budget, and Performance (M/MPBP).
- *Form Number:* AID 500–13.
- *Respondents:* Potential awardees and subawardees.
- *Estimated Annual Number of Responses:* 5,800.
- *Average Time per Response:* 1 hour 30 minutes.
- *Total Estimated Burden Time:* 8,700 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

USAID solicits public comments on the following:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Agency.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on respondents, including the use of automated collection techniques or other forms of information technology.

Abstract of Proposed Collection

USAID collects information from individuals and organizations to conduct screening to help ensure that USAID funds, USAID-funded activities, or other resources will not be used to provide support to entities or individuals deemed to be a risk to national security.

USAID vets prospective awardees seeking funding from USAID to mitigate the risk that such funds might benefit entities or individuals who present a national security risk. To conduct vetting, USAID collects information from prospective awardees and subawardees regarding their directors, officers, and/or key employees. The information collected is compared to information gathered from commercial, public, and U.S. government databases to determine the risk that the applying organization or individual might use Agency funds or programs in a way that presents a threat to national security.

Methodology

USAID collects information via mail or electronic submission.

Colleen Allen,

Director, Bureau for Management, Office of Management Policy, Budget, and Performance, U.S. Agency for International Development.

[FR Doc. 2019–19210 Filed 9–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Agrosource, Inc. of Tequesta, Florida, an exclusive license to U.S. Patent No. 9,949,489, ''Methods for Control of Hemipteran Insect Stylet Sheath Structure Formation,'' issued on April 24, 2018.

DATES: Comments must be received on or before October 7, 2019.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Agrosource, Inc. of Tequesta, Florida has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2019–19236 Filed 9–5–19; 8:45 am]

BILLING CODE 3410–03–P

BROADCASTING BOARD OF GOVERNORS

Government in the Sunshine Act Meeting Notice

DATE AND TIME: Wednesday, September 11, 2019, 10:45 a.m. EDT.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW, Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The U.S. Agency for Global Media's (USAGM) Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its June 5, 2019 meeting, a resolution honoring the 65th anniversary of Radio Free Europe/Radio Liberty's Ukrainian Service, and a resolution for David Burke Distinguished Journalism Award. The Board will receive a report from the USAGM's Chief Executive Officer and Director.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the agency's public website at *www.usagm.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public website.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at *https://usagmboardmeeting september2019.eventbrite.com* by 12:00

p.m. (EDT) on September 10. For more information, please contact USAGM Public Affairs at (202) 203–4400 or by email at *pubaff@usagm.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,

Executive Director.

[FR Doc. 2019–19444 Filed 9–4–19; 4:15 pm]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a telephonic meeting on Monday, September 23, 2019 from 12:00 p.m.–1:00 p.m. Central time. The Committee will meet to approve final edits to the Education Funding report.

DATES: The meeting will take place on Monday, September 23, 2019 from 12:00 p.m.–1:00 p.m. Central time.

Public Call Information: Dial: 206–800–4892, Conference ID: 36922851.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed number, please use the call in number and the conference ID in order to fully access the meeting.

An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Advisory Committee Management Unit, U.S. Commission on Civil Rights, 230 S Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Advisory Committee Management Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=249*). Click on ''meeting details'' and then ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introduction
Committee discussion and final edits
Public Comment
Adjournment

Dated: September 3, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–19269 Filed 9–5–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the District of Columbia Advisory Committee to the Commission will convene by conference call, at 12:00 p.m. (EDT) Thursday, September 5, 2019. The purpose of the planning meeting is to continue project planning for a future briefing meeting on the Committee's civil rights project that examines the intersection of homelessness, mental health and the criminal justice system, including a review of the DC Mental Health Court.

DATES: Thursday, September 5, 2019 at 12:00 p.m. (EDT).

ADDRESSES: Public Call-In Information: Conference call number: 1–877–260–1479 and conference call ID number: 1929821.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–877–260–1479 and conference call ID number: 1929821. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–877–260–1479 and conference call ID number: 1929821.

Members of the public are invited to make statements during the Public Comments section of the meeting or to submit written comments. The comments must be received in the regional office by Monday, July 8, 2019. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlKAAQ.* Please click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons

interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda: Thursday, September 5, 2019, at 12:00 p.m. (EDT)

I. Welcome and Rollcall
II. Discuss Project and Hearing Planning
III. Other Business
IV. Next Planning Meeting
V. Public Comments
VI. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: August 30, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–19227 Filed 9–5–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the West Virginia Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Friday, September 6, 2019. The purpose of the meeting is to discuss and vote to submit the Committee's collateral consequences report to the Staff Director for publication.

DATES: Friday, September 6, 2019 at 12:00 p.m. (EST).

ADDRESSES: Public Call-In Information: Conference call-in number: 1–888–882–4478 and conference call ID number: 1071218.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–882–4478 and conference call ID number: 1071218. Please be advised that before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call-in number: 1–888–882–4478 and conference call ID number: 1071218.

Members of the public are invited to make statements during the Public Comments section of the Agenda. They are also invited to submit written comments, which must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicView CommitteeDetails?id= a10t0000001gzmCAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: September 6, 2019 at 12:00 p.m. (EST)

I. Rollcall
II. Welcome
—Discus and vote to submit civil rights project report to Staff Director for publication.
III. Other Business
IV. Next Meeting
V. Open Comments
VI. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: August 30, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–19228 Filed 9–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Sunday, September 15, 2019.

DATES: The meeting will be held Sunday, September 15, 2019 from 8:30 a.m. to 3:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held at the Atlanta Marriott Marquis, 265 Peachtree Center Avenue NE, Atlanta, GA 30303. Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800; telephone number (301) 975–2785; email: *cheryl.gendron@nist.gov*.

SUPPLEMENTARY INFORMATION: The MEP Advisory Board is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110–69), as amended by the American Innovation and Competitiveness Act, Public Law 114–329 sec. 501 (2017), and codified at 15 U.S.C. 278k(m), in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Hollings Manufacturing Extension Partnership Program (Program) is a unique program, consisting of Centers in all 50 states and Puerto Rico with partnerships at the state, federal, and local levels. By statute, the MEP Advisory Board provides the NIST Director with: (1) Advice on the activities, plans, and policies of the Program; (2) assessments of the soundness of the plans and strategies of the Program; and (3) assessments of current performance against the plans of the Program.

Background information on the MEP Advisory Board is available at *http://www.nist.gov/mep/about/advisory-board.cfm*.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting on Sunday, September 15, 2019, from 8:30 a.m. to 3:30 p.m. Eastern Time. The meeting agenda will include an update on the MEP programmatic operations, as well as provide guidance and advice on current activities related to the MEP National Network™ 2017–2022 Strategic Plan. The MEP Advisory Board will provide input to NIST on supply chain development with an emphasis on defense suppliers, in order to strengthen the defense industrial base. The final agenda will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. Requests must be received in writing by September 6, 2019 to be considered. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm*. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who wished to speak but could not be accommodated on the agenda, or those who are/were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, via fax at (301) 963–6556, or electronically by email to *cheryl.gendron@nist.gov*.

Admittance Instructions: Anyone wishing to attend the MEP Advisory Board meeting must submit their name, email address and phone number to Cheryl Gendron (*Cheryl.Gendron@nist.gov* or 301–975–2785) no later than Friday, September 6, 2019, 5:00 p.m. Eastern Time.

Kevin Kimball,

Chief of Staff.

[FR Doc. 2019–19303 Filed 9–5–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Voluntary Product Standard 1–09, Structural Plywood

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) is soliciting public comment on a proposed revision to Voluntary Product Standard (PS) 1–09, Structural Plywood. The standard, prepared by the Committee for PS 1, establishes requirements (for those who choose to adhere to the standard) for the principal types and grades of structural plywood and provides a basis for common understanding among producers, distributors, and users of the product. This standard covers the wood species, veneer grading, adhesive bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content and packaging of structural plywood intended for construction and industrial uses.

DATES: Written comments regarding the proposed revision to PS 1–09 should be submitted to the Standards Services Division, NIST, no later than October 7, 2019.

ADDRESSES: An electronic copy of the proposed revision to the standard, PS 1–09, can be obtained at the following website: *https://www.nist.gov/standardsgov/voluntary-product-standards-program*. This site also includes a summary of the significant changes. Written comments on the proposed revision should be submitted to David F. Alderman, Standards Coordination Office, NIST, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100. Electronic comments may be submitted via email to *david.alderman@nist.gov*.

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Standards Coordination Office, National Institute of Standards and Technology, telephone (301) 975–4019; fax: (301) 975–4715, email: *david.alderman@nist.gov*.

SUPPLEMENTARY INFORMATION: The proposed revision of the standard has been developed and is being processed in accordance with Department of Commerce provisions in 15 CFR part 10, *Procedures for the Development of Voluntary Product Standards,* as amended (published June 20, 1986). The Committee for PS 1 is responsible for maintaining, revising, and interpreting the standard, and is comprised of producers, distributors, users, and others with an interest in the standard. Committee members voted on the revision and approved. The Committee then submitted a report to NIST along with the voting results and the draft revised standard. NIST has determined that the revised standard should be issued for public comment.

Voluntary Product Standard PS 1–09 establishes requirements for the principal types and grades of structural plywood and provides a basis for common understanding among producers, distributors, and users of the product. The standard covers the wood species, veneer grading, adhesive bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content, and packaging of structural plywood intended for construction and industrial uses. After conducting a review of the current standard, PS 1–09, the Committee for PS 1 determined that updates were needed to reflect current industry practices and developed the proposed revision to the standard. The proposed revision includes the following changes: editorial corrections, new and revised definitions, and updated references. A complete list of proposed changes can be found at *https://www.nist.gov/standardsgov/voluntary-product-standards-program*.

Written comments should be submitted in accordance with the **DATES** and **ADDRESSES** sections of this notice. Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish comments publicly, unedited and in their entirety. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information. Do not submit

confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered. The Committee for PS 1 and NIST will consider all other relevant comments received and may revise the standard accordingly.

Authority: 15 U.S.C. 272.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–19302 Filed 9–5–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV051

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of webinar.

SUMMARY: The North Pacific Fishery Management Council (Council) will hold a webinar on September 20, 2019.

DATES: The webinar will be held on Friday, September 20, 2019, from 9 a.m. to 1 p.m., Pacific Standard Time.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center in the Traynor Room 2076, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115. Adobe Connect web address is: *https://npfmc.adobeconnect.com/abm/.*

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Friday, September 20, 2019

The Council is hosting a webinar for the presentation of the draft Environmental Impact Statement for the BSAI Halibut abundance-based management (ABM) prohibited species catch limits. The purpose of the webinar is to provide the public with an understanding of the contents of the analysis and provide an opportunity for clarifying questions with the analysts. This will provide the public with a greater understanding of the analysis and help facilitate written public comments to the Council prior to the written comment deadline for the October Council meeting. Analysts will provide a presentation on the analysis, which will be web broadcast via Adobe Connect. Following the presentation, there will be a question and answer period via online submissions of the questions through *meetings.npfmc.org/Meeting/Details/905,* as well as in-person for public attending the meeting.

The Agenda is subject to change, and the latest version will be posted at *meetings.npfmc.org/Meeting/Details/905* prior to the meeting, along with meeting materials.

Public Comment

Public comment will be limited to written comments only and should be submitted electronically to *meetings.npfmc.org/Meeting/Details/905.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

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

Dated: September 3, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–19267 Filed 9–5–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR016

Endangered and Threatened Species; Initiation of 5-Year Review for the Scalloped Hammerhead Shark Central & Southwest Atlantic, Eastern Atlantic, Eastern Pacific, and Indo-West Pacific Distinct Population Segments

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

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: NMFS announces its intent to conduct a 5-year review for the four distinct population segments (DPSs) of the scalloped hammerhead shark (*Sphyrna lewini*): Eastern Atlantic DPS, Eastern Pacific DPS, Central & Southwest Atlantic DPS, and Indo-West Pacific DPS. NMFS is required by the Endangered Species Act (ESA) to conduct 5-year reviews to ensure that listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such information on these scalloped hammerhead shark DPSs, particularly information on the status, threats, and recovery of the DPSs that have become available since their listing on July 3, 2014 (79 FR 38214).

DATES: To allow us adequate time to conduct this review, we must receive your information no later than November 5, 2019. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit information on this document identified by NOAA–NMFS–2019–0071 by either of the following methods:

- *Electronic submission:* Submit electronic information via the Federal e-Rulemaking Portal. Go to *www.regulations.gov.* To submit information via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2019–0071 in the keyword search. Locate the document you wish to respond to from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail or Hand-Deliver:* Submit written comments to Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13626, Silver Spring, MD 20910; Attn: Quibilah Barnes.

Instructions: Information must be submitted by one of the above methods to ensure that the information is received, documented, and considered by NMFS. Information sent by any other method, to any other address or individual, or received after the end of the specified period, may not be considered. All information received is 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 or protected information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous submissions (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Therese Conant at the above address (attn.: Quibilah Barnes), by phone at

(916) 930–3627 or *therese.conant@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our review of the status of the endangered Eastern Atlantic DPS, endangered Eastern Pacific DPS, threatened Central & Southwest Atlantic DPS, and threatened Indo-West Pacific DPS of scalloped hammerhead shark. Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. On the basis of such reviews under section 4(c)(2)(B), we determine whether a species should be delisted or reclassified from endangered to threatened or from threatened to endangered. As described by the regulations in 50 CFR 424.11(d), delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The scalloped hammerhead shark DPSs were listed under the ESA on July 3, 2014 (79 FR 38214).

Background information on the scalloped hammerhead shark DPSs is available on the NMFS website at: *https://www.fisheries.noaa.gov/species/scalloped-hammerhead-shark*.

Determining if a Species Is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial data, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the listed scalloped hammerhead DPSs. Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; (5) need for additional conservation measures; and (6) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

If you wish to provide information for the 5-year reviews, you may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 3, 2019.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–19294 Filed 9–5–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP003

Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) on October 10–11, 2019. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held on October 10, 2019, from 8 a.m. to 4:30 p.m. Hawaii Standard Time (HST) (or until business is concluded) and October 11, 2019 from 8 a.m. to 4:30 p.m. HST (or until business is concluded).

ADDRESSES: The public meeting will be held at the 'Alohilani Resort Waikiki Beach, 2490 Kalakaua Avenue, Honolulu, Hawaii, 96815—in the Stingray Meeting Room. Documents to be considered by the PAC will be made available at the meeting.

FOR FURTHER INFORMATION CONTACT: Emily Reynolds, NMFS Pacific Islands Regional Office; 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808–725–5039; facsimile: 808–725–5215; email: *emily.reynolds@noaa.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the Permanent Advisory Committee, or PAC, has been formed to advise the U.S. Commissioners to the WCPFC. The PAC is composed of: (i) Not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC; (ii) the chair of the Western Pacific Fishery Management Council's Advisory Committee (or the chair's designee); and (iii) officials from the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees). The PAC supports the work of the U.S.

National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. More information on the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFC website: *http://www.wcpfc.int.*

Meeting Topics

The PAC meeting topics may include the following: (1) Outcomes of the 2018 Annual Meeting and 2019 sessions of the WCPFC Scientific Committee, Northern Committee, and Technical and Compliance Committee; (2) conservation and management measures for bigeye tuna, yellowfin tuna, skipjack tuna and other species for 2019 and beyond; (3) potential U.S. proposals to WCPFC16; (4) input and advice from the PAC on issues that may arise at WCPFC16; (5) potential proposals from other WCPFC members; and (6) other issues.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Reynolds at 808–725–5039 by September 12, 2019.

Authority: 16 U.S.C. 6902 *et seq.*

Dated: September 3, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–19304 Filed 9–5–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

DATES: Comments must be received on or before: October 06, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN—Product Name: 8540–01–169–9010—Towel, Paper, Absorbent, White, Roll, 11″ x 9″

Mandatory Source of Supply: Outlook Nebraska, Inc, Omaha, NE

Mandatory for: Total Government Requirement

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

NSNs 8415–00–SAM–4221 through 8415–00–SAM–4255

Trouser, Army Services Green Uniform, Men's, Classic Fit, Heritage Taupe—Sizes: 28–S, 29–S, 30–S, 31–S, 32–S, 33–S, 34–S, 35–S, 36–S, 37–S, 26–R, 28–R, 29–R, 30–R, 31–R, 32–R, 33–R, 34–R, 35–R, 36–R, 37–R, 29–L, 30–L, 31–L, 32–L, 33–L, 34–L, 35–L, 36–L, 37–L, 30–XL, 32–XL, 33–XL, 34–XL, 36–XL

NSNs 8415–00–SAM–4256 through 8415–00–SAM–4282

Trouser, Army Services Green Uniform, Men's, Athletic Fit, Heritage Taupe—Sizes: 33–S, 34–S, 35–S, 36–S, 37–S, 29–R, 30–R, 31–R, 32–R, 33–R, 34–R, 35–R, 36–R, 37–R, 30–L, 31–L, 32–L, 33–L, 34–L, 35–L, 36–L, 37–L, 30–XL, 32–XL, 33–XL, 34–XL, 36–XL

NSNs 8415–00–SAM–4361 through 8415–00–SAM–4397

Shirt, Army Services Green Uniform, Men's, Frch Plkt, L/S, Classic Fit, Heritge Tan—Sizes: 13½ x 32/33, 14 x 29, 14 x 30/31, 14 x 32/33, 14½ x 30/31, 14½ x 32/33, 15 x 29, 15 x 30/31, 15 x 32/33, 15 x 34/35, 15½ x 30/31, 15½ x 32/33, 15½ x 34/35, 16 x 29, 16 x 30/31, 16 x 32/33, 16 x 34/35, 16½ x 30/31, 16½ x 32/33, 16½ x 34/35, 16½ x 36/37, 17 x 32/33, 17 x 34/35, 17 x 36/37, 17½ x 32/33, 17½ x 34/35, 17½ x 36/37, 18 x 32/33, 18 x 34/35, 18 x 36/37, 18 x 38/39, 18½ x 34/35, 18½ x 36/37, 18½ x 38/39, 19 x 34/35, 19 x 36/37, 19 x 38/39

NSNs 8415–00–SAM–4398 through 8415–00–SAM–4428

Shirt, Army Services Green Uniform, Men's, Frch Plkt, L/S, Athletic Fit, Heritge Tan—Sizes: 15½ x 32/33, 15½ x 34/35, 16 x 30/31, 16 x 32/33, 16 x 34/35, 16½ x 32/33, 16½ x 34/35, 16½ x 36/37, 17 x 32/33, 17 x 34/35, 17 x 36/37, 17 x 38/39, 17½ x 32/33, 17½ x 34/35, 17½ x 36/37, 17½ x 38/39, 18 x 32/33, 18 x 34/35, 18 x 36/37, 18 x 38/39, 18½ x 32/33, 18½ x 34/35, 18½ x 36/37, 18½ x 38/39, 19 x 34/35, 19 x 36/37, 19 x 38/39, 19½ x 34/35, 19½ x 36/37, 20 x 34/35, 20 x 36/37

NSNs 8415–00–SAM–4429 through 8415–00–SAM–4440

Shirt, Army Services Green Uniform, Men's, Frch Plkt, S/S, Classic Fit, Heritage Tan—Sizes: 13½, 14, 14½, 15, 15½, 16, 16½, 17, 17½, 18, 18½, 19

NSNs 8415–00–SAM–4441 through 8415–00–SAM–4450

Shirt, Army Services Green Uniform, Men's, Frch Plkt, S/S, Athletic Fit, Heritage Tan—Sizes: 15½, 16, 16½, 17, 17½, 18, 18½, 19, 19½, 20

NSNs 8415–00–SAM–4451 through 8415–00–SAM–4547

Coat, Dress, Army Services Green Uniform, Men's, Athletic Fit, Heritage Green—Sizes: 33–XS, 34–XS, 35–XS, 36–XS, 37–XS, 38–XS, 39–XS, 40–XS, 41–XS, 42–XS, 33–S, 34–S, 35–S, 36–S, 37–S, 38–S, 39–S, 40–S, 41–S, 42–S, 43–S, 44–S, 45–S, 46–S, 47–S, 48–S, 49–S, 50–S, 51–S, 52–S, 54–S, 30–R, 31–R, 32–R, 33–R, 34–R, 35–R, 36–R, 37–R, 38–R, 39–R, 40–R, 41–R, 42–R, 43–R, 44–R, 45–R, 46–R, 47–R, 48–R, 49–R, 50–R, 51–R, 52–R, 54–R, 32–L, 33–L, 34–L, 35–L, 36–L, 37–L, 38–L, 39–L, 40–L, 41–L, 42–L, 43–L, 44–L, 45–L, 46–L, 47–L, 48–L, 49–L, 50–L, 51–L, 52–L, 54–L, 34–XL, 35–XL, 36–XL, 37–XL, 38–XL, 39–XL, 40–XL, 41–XL, 42–XL, 43–XL, 44–XL, 45–XL, 46–XL, 47–XL, 48–XL, 49–XL, 50–XL, 51–XL, 52–XL, 54–XL

NSNs 8415–00–SAM–4548 through 8415–00–SAM–4644

Coat, Dress, Army Services Green Uniform, Men's, Classic Fit, Heritage Green—Sizes: 33–XS, 34–XS, 35–XS, 36–XS, 37–XS, 38–XS, 39–XS, 40–XS, 41–XS, 42–XS, 33–S, 34–S, 35–S, 36–S, 37–S, 38–S, 39–S, 40–S, 41–S, 42–S, 43–S, 44–S, 45–S, 46–S, 47–S, 48–S, 49–S, 50–S, 51–S, 52–S, 54–S, 30–R, 31–R, 32–R, 33–R, 34–R, 35–R, 36–R, 37–R, 38–R, 39–R, 40–R, 41–R, 42–R, 43–R, 44–R, 45–R, 46–R, 47–R, 48–R, 49–R, 50–R, 51–R, 52–R, 54–R, 32–L, 33–L, 34–L, 35–L, 36–L, 37–L, 38–L, 39–L, 40–L, 41–L, 42–L, 43–L, 44–L, 45–L, 46–L, 47–L, 48–L, 49–L, 50–L, 51–L, 52–L, 54–L, 34–XL, 35–XL, 36–XL, 37–XL, 38–XL, 39–XL, 40–XL, 41–XL, 42–XL, 43–XL, 44–XL, 45–XL, 46–XL, 47–XL, 48–XL, 49–XL, 50–XL, 51–XL, 52–XL, 54–XL, 4–JR–P, 6–JR–P, 8–JR–P, 10–JR–P, 12–JR–P, 14–JR–P, 16–JR–P, 8–

JR–R, 10–JR–R, 12–JR–R, 14–JR–R, 16–JR–R, 18–JR–R, 20–JR–R, 22–JR–R, 10–JR–T, 12–JR–T, 14–JR–T, 16–JR–T, 12–JR–XT, 14–JR–XT, 16–JR–XT, 4–M–P, 6–M–P, 8–M–P, 10–M–P, 12–M–P, 14–M–P, 16–M–P, 4–M–R, 6–M–R, 8–M–R, 10–M–R, 12–M–R, 14–M–R, 16–M–R, 18–M–R, 20–M–R, 22–M–R, 24–M–R, 26–M–R, 6–M–T, 8–M–T, 10–M–T, 12–M–T, 14–M–T, 16–M–T, 18–M–T, 20–M–T, 22–M–T, 24–M–T, 26–M–T, 16–M–XT, 18–M–XT, 20–M–XT, 4–W–P, 6–W–P, 8–W–P, 10–W–P, 12–W–P, 14–W–P, 16–W–P, 6–W–R, 8–W–R, 10–W–R, 12–W–R, 14–W–R, 16–W–R, 18–W–R, 20–W–R, 22–W–R, 6–W–T, 8–W–T, 10–W–T, 12–W–T, 14–W–T, 16–W–T, 18–W–T, 20–W–T, 22–W–T, 24–W–T, 26–W–T, 12–W–XT, 14–W–XT, 16–W–XT, 18–W–XT

Mandatory Source of Supply: Goodwill Industries of South Florida, Miami, FL (Men's Long & Short Sleeve Shirts); Middle Georgia Diversified Industries, Inc. (Men's Long & Short Sleeve Shirts); Dublin, GA; Puerto Rico Industries for the Blind, Corp, Mayaguez, PR (Men's & Women's Dress Coats); VGS, Inc., Cleveland, OH (Men's Trousers)

Mandatory Purchase For: 20% of the requirement of the U.S. Army

Contracting Activity: Army Contracting Command, Aberdeen Proving Grounds Natick, Natick, MA

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN—Product Name: 8030–00–524–9487—Compound, Corrosion Preventative, Type II, Class I, 55 Gallons

Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN—Product Name: 7510–01–660–3734—Toner Cartridge, Remanufactured, Standard Yield, Black, HP LaserJet M5025 MFP/5035/M5035X/M5035xsMFP

Mandatory Source of Supply: Alabama Industries for the Blind, Talladega, AL

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–19259 Filed 9–5–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* October 6, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 8/2/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN—Product Name: 7045–01–365–2069—Diskettes, Formatted, 1.44 MB, 3.5″, BX/10

Mandatory Source of Supply: North Central Sight Services, Inc., Williamsport, PA

Contracting Activity: DLA Troop Support, Philadelphia, PA

NSN—Product Name: MR 331—Pitter, Cherry and Olive

Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH

Contracting Activity: Military Resale-Defense Commissary Agency

NSN—Product Name: 9905–00–565–6267—Sign-Kit, Vehicle Weight

Mandatory Source of Supply: CW Resources, Inc., New Britain, CT

Contracting Activity: GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX

Services

Service Type: Custodial and Related Services, Custodial service

Mandatory for: GSA PBS Region 4, Federal Building Courthouse, 50 Main Street, Bryson City, NC

Mandatory Source of Supply: Portco, Inc., Portsmouth, VA

Contracting Activity: Public Buildings Service, Acquisition Division/Services Branch

Service Type: Mailroom Support Services

Mandatory for: Bureau of Land Management, Arizona State Office: 222 Central Avenue, Phoenix, AZ

Mandatory Source of Supply: The Centers for Habilitation/TCH, Tempe, AZ

Contracting Activity: Office of Policy, Management, and Budget, NBC Acquisition Services Division

Service Type: Grounds Maintenance

Mandatory for: U.S. Geological Survey: Florida Caribbean Science Center, Gainesville, FL

Mandatory Source of Supply: The Arc of Alachua County, Inc., Gainesville, FL

Contracting Activity: Office of Policy, Management, and Budget, NBC Acquisition Services Division

Service Type: Furniture Moving Services

Mandatory for: U.S. Forest Service, 1720 Peachtree Road, NW, Atlanta, GA

Mandatory Source of Supply: Bobby Dodd Institute, Inc., Atlanta, GA

Contracting Activity: Forest Service, Dept of Agric/Forest Service

Service Type: Toner Cartridge Remanufacturing

Mandatory for: Department of Energy, Washington, DC

Mandatory Source of Supply: Rappahannock Goodwill Industries, Inc., Fredericksburg, VA

Contracting Activity: Energy, Department of, Headquarters Procurement Services

Service Type: Janitorial/Custodial

Mandatory for: Department of Veterans Affairs: Franklin D. Roosevelt Hospital, Buildings 17, 18, 29, 30, 52, Paint Shop & Chapel. Montrose, NY

Service Type: Janitorial/Related Exterior Maintenance

Mandatory for: Veterans Affairs Outpatient Clinic, 351 East Temple Street, Los Angeles, CA

Mandatory Source of Supply: Asian Rehabilitation Services, Inc., Los Angeles, CA

Service Type: Janitorial/Custodial

Mandatory for: Department of Veterans Affairs: Lompoc Clinic, Lompoc, CA

Mandatory Source of Supply: Life Options, Vocational and Resource Center, Lompoc, CA

Contracting Activity: Veterans Affairs,

Department of, NAC
Service Type: Mailing Services
Mandatory for: GSA, National Archive and Record Service, Washington, DC
Mandatory Source of Supply: The ARC of the District of Columbia, Inc., Washington, DC
Contracting Activity: General Services Administration

Service Type: Janitorial/Custodial
Mandatory for: FAA Flight Standards District Office: 9191 Plank Road, Baton Rouge, LA
Mandatory Source of Supply: Louisiana Industries for the Disabled, Inc., Baton Rouge, LA
Contracting Activity: Transportation, Department of, Dept of Trans

Service Type: Laundry Service
Mandatory for: Veterans Affairs Medical Center: 7305 N Military Trail, West Palm Beach, FL
Mandatory Source of Supply: Gulfstream Goodwill Industries, Inc., West Palm Beach, FL
Contracting Activity: Veterans Affairs, Department of, 548P–West Palm Prosthetics

Service Type: Document Destruction
Mandatory for: National Archives & Records Administration, Perris, CA
Mandatory Source of Supply: Goodwill Industries of Southern California, Panarama City, CA
Contracting Activity: National Archives and Records Administration, NARA Facilities

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–19258 Filed 9–5–19; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0088]

Agency Information Collection Activities; Proposed Collection; Comment Request; Third Party Conformity Assessment Body Registration Form

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval of a collection of information under the requirements pertaining to a third party conformity assessment bodies registration form, approved previously under OMB Control No. 3041–0143. The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by November 5, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0088, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2009–0088, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Bretford J. Griffin, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *bgriffin@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Third Party Conformity Assessment Body Registration Form.

OMB Number: 3041–0143.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Third party conformity assessment bodies seeking acceptance of accreditation or continuing accreditation.

General Description of Collection: The Consumer Product Safety Improvement Act of 2008 (CPSIA) requires third party testing be conducted by a third party conformity assessment body for any children's product, that is subject to a children's product safety rule, before importing for consumption or warehousing or distributing in commerce. The CPSIA allows accreditation of third party conformity assessment bodies to be conducted either by the Commission or by an independent accreditation organization designated by the Commission, and requires that the Commission maintain on its website an up-to-date list of entities that have been accredited to assess conformity with children's product safety rules. With the exception of firewalled third party conformity assessment bodies, the Commission has chosen to accept the accreditation of third party conformity assessment bodies that meet accreditation requirements of an independent accreditation organization.

To assess a third party conformity assessment body's qualifications for acceptance by CPSC, information related to location, accreditation, and ownership must be collected from third party conformity assessment bodies. The CPSC uses an online collection form, CPSC Form 223, to gather information from third party conformity assessment bodies voluntarily seeking acceptance by CPSC. The information collected relates to location, accreditation, and ownership. The Commission staff uses this information to assess:

- A third party conformity assessment body's status as either an independent third party conformity assessment body, a government-owned or government-controlled conformity assessment body, or a firewalled conformity assessment body;
- Qualifications for acceptance by CPSC to test for compliance to specified children's product safety rules; and
- Eligibility for acceptance on the CPSC website.

Part 1112 requires the collection of information in CPSC Form 223:

- Upon initial application by the third party conformity assessment body for acceptance by CPSC;
- Whenever there is a change to accreditation or ownership information; and
- At least every 2 years as part of a regular audit process.

Estimated Burden: The CPSC estimates the burden of the collection of information in CPSC Form 223 is as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Activity	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total hours
Initial Registration	40	1	40	1	40
Re-Registration	291	1	291	1	291
Changes in Information	6	1	6	0.25	1.5
Total					332.5

These estimates are based on the following information:

• Based on applications received from FY 2013 to date, we estimate the number of third party conformity assessment bodies who would register initially each year for the next three years would be 40.

• Under 16 CFR part 1112, third party conformity assessment bodies are required to resubmit CPSC Form 223 every two years. As all third party conformity assessment bodies have not submitted their first CPSC Form 223s at the same time, only about half would be expected to resubmit a CPSC Form 223 in any 1 year. As of

• August 2019, 581 third party conformity assessment bodies have registered with CPSC. Approximately half (291) of these firms would be required to re-register with CPSC each year.

• Under 16 CFR part 1112, third party conformity assessment bodies are required to ensure that the information submitted on CPSC Form 223 is current and to submit a new CPSC Form 223 whenever the information changes. Based on current experience with third party conformity assessment bodies, we estimate that two third party conformity assessment bodies will make revisions per year to update their information. A change in information is a change that does not require review of laboratory accreditation documents, such as scope or test methods. Examples of revised information include changes in the website URL, name of the laboratory, and name of point of contact.

The total burden, therefore, is 332.5 hours, which we will round up to 333 hours. We estimate that hourly compensation for the time required for recordkeeping is $34.61 per hour (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' Table 9, total compensation for sales, office, and related workers in goods-producing industries, March 2019: *https://www.bls.gov/ect/data.htm*). The total cost burden to the respondents is approximately $11,525 ($34.61 × 333 hours = $11,525).

Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

• Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

• Whether the estimated burden of the proposed collection of information is accurate;

• Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

• Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–19285 Filed 9–5–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0114]

Agency Information Collection Activities; Comment Request; Foreign Gifts and Contracts Disclosures

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before November 5, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0114. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Hilary Malawer, 202–401–6148.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the

respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Foreign Gifts and Contracts Disclosures.

OMB Control Number: 1801–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 400.

Total Estimated Number of Annual Burden Hours: 4,000.

Abstract: Section 117 of the Higher Education Act of 1965 (HEA), as amended, provides that institutions of higher education must file a disclosure report with the Secretary of Education under the following circumstances:

Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is $250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.

This collection of information is necessary to ensure that the Secretary receives sufficient information about gifts or contracts involving a foreign source, or about ownership or control of the institution by a foreign source, to be able to enforce 20 U.S.C. 1011f.

Dated: September 3, 2019.

Stephanie Valentine,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–19296 Filed 9–5–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0113]

Agency Information Collection Activities; Comment Request; Program for the International Assessment of Adult Competencies (PIAAC) 2022 Cycle II Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before November 5, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0113. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for the International Assessment of Adult Competencies (PIAAC) 2022 Cycle II Field Test.

OMB Control Number: 1850–0870.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 5,662.

Total Estimated Number of Annual Burden Hours: 1,262.

Abstract: The Program for the International Assessment of Adult Competencies (PIAAC) is a cyclical, large-scale study of adult skills and life experiences focusing on education and employment. PIAAC is an international study designed to assess adults in different countries over a broad range of abilities, from simple reading to complex problem-solving skills, and to collect information on individuals' skill use and background. PIAAC is coordinated by the Organization for Economic Cooperation and Development (OECD) and developed by participating countries with the support of the OECD. In the United States, the National Center for Education Statistics (NCES), within the U.S. Department of Education (ED) conducts PIAAC. The U.S. participated in the PIAAC Main Study data collection in 2012 and conducted national supplement data collections in 2014 and 2017. All three of these collections are part of PIAAC Cycle I. A new PIAAC cycle is to be conducted every 10 years, and PIAAC Cycle II Main Study data collection will be conducted from August 2021 through March 2022. In preparation for the main study collection, PIAAC Cycle II will begin with a Field Test in 2020, in which 34 countries are expected to participate with the primary goal of evaluating newly developed assessment and questionnaire items and to test the PIAAC 2022 planned operations. PIAAC 2022 defines four core competency domains of adult cognitive skills that are seen as key to facilitating the social and economic participation of adults in advanced economies: (1) Literacy, (2) numeracy, (3) reading and numeracy components, and (4) adaptive problem solving. The U.S. will administer all four domains of the PIAAC 2022 assessment to a nationally

representative sample of adults, along with a background questionnaire with questions about their education background, work history, the skills they use on the job and at home, their civic engagement, and sense of their health and well-being. The results are used to compare the skills capacities of the workforce-aged adults in participating countries, and to learn more about relationships between educational background, employment, and other outcomes. In addition, in PIAAC 2022, a set of financial literacy questions will be included in the background questionnaire. This request is to conduct the PIAAC Cycle II Field Test in April–June 2020.

Dated: September 3, 2019.

Stephanie Valentine,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–19300 Filed 9–5–19; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Meeting: Technical Guidelines Development Committee; "Voluntary Voting Systems Guidelines and Technical Requirements"

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting.

DATES: Thursday, September 19, 2019, from 9:00 a.m. until 5:00 p.m., Eastern time, and Friday, September, 2019 from 9:00 a.m. to 1:00 p.m., Eastern time (estimated based on speed of business).

ADDRESSES: The meeting will take place at the U.S. Election Assistance Commission, 1335 East-West Highway (First Floor Conference Room), Silver Spring, MD 20910, (301) 563–3919.

FOR FURTHER INFORMATION CONTACT: Jerome Lovato, Telephone: (301) 563–3929.

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. Appendix 2), the U.S. Election Assistance Commission (EAC) Technical Guidelines Development Committee will conduct an open meeting to discuss the Voluntary Voting System Guidelines and Technical Requirements.

Agenda: The Technical Guidelines Development Committee (TGDC) will discuss the Voluntary Voting System Guidelines 2.0 (VVSG 2.0) and all accompanying Technical Requirements. The TGDC will discuss the next TGDC meeting dates and the continuing steps to develop the Technical Requirements. There may be votes conducted at this meeting. Final Agenda will be published at *www.eac.gov* before the meeting.

The TGDC will discuss the Requirements of the VVSG 2.0. Draft VVSG Requirements can be found at the link below: *https://collaborate.nist.gov/voting/bin/view/Voting/VVSG20DraftRequirements.* The most current version of the draft VVSG 2.0 Requirements is clearly marked at the top of the page to ensure the latest version is the topic of discussion at the time of the meetings. As stated in the disclaimer (and in each document), the Requirements are in a draft state and are not yet ready for final posting in their current form. These are provided ''as is'' for facilitating on-going discussions, but do not yet represent an official or final version. Members of the public may submit relevant written statements about the meeting's content to the TGDC no later than 3:00 p.m. EDT on Wednesday, September 18, 2019.

Statements may be sent electronically via *https://www.eac.gov/contact/,* via standard mail addressed to the U.S. Election Assistance Commission, TGDC, 1335 East-West Highway, Suite 4300, Silver Spring, MD 20910, or by fax at 301–734–3108. This meeting is open to the public.

Dated: September 3, 2019.

Clifford D. Tatum,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2019–19289 Filed 9–5–19; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2997–031]

South Sutter Water District; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major, new license.

b. *Project No.:* P–2997–031.

c. *Date filed:* July 1, 2019.

d. *Applicant:* South Sutter Water District.

e. *Name of Project:* Camp Far West Hydroelectric Project.

f. *Location:* The existing hydroelectric project is located on the Bear River in Yuba, Nevada, and Placer Counties, California. The project, with the proposed project boundary modifications, would occupy a total of 2,674 acres. No federal or tribal lands occur within or adjacent to the project boundary or along the Bear River downstream of the project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brad Arnold, General Manager, South Sutter Water District, 2464 Pacific Avenue, Trowbridge, California 95659.

i. *FERC Contact:* Quinn Emmering, (202) 502–6382, *quinn.emmering@ferc.gov.*

j. *Deadline for filing motions to intervene and protests and requests for cooperating agency status: 60 days* from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2997–031.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Project Description:* The existing Camp Far West Hydroelectric Project operates to primarily provide water during the irrigation season, generate power, and meet streamflow requirements for the Bear River. The existing project includes: (1) A 185-foot-high, 40-foot-wide, 2,070-foot-long, zoned, earth-filled main dam; (2) a 45-foot-high, 20-foot-wide, 1,060-foot-long, earth-filled south wing dam; (3) a 25-foot-high, 20-foot-wide, 1,460-foot-long, earth-filled north wing dam; (4) a 15-foot-high, 20-foot-wide, 1,450-foot-long, earth-filled dike; (5) a 1,886-acre

reservoir with a gross storage capacity of about 93,737 acre-feet at the normal maximum water surface elevation (NMWSE) of 300 feet; (6) an overflow spillway with a 15-foot-wide concrete approach apron, 300-foot-long ungated, ogee-type concrete structure, and a 77-foot-long downstream concrete chute with concrete sidewalls; (7) a 1,200-foot-long, unlined, rock channel that carries spill downstream to the Bear River; (8) a 22-foot-high, concrete, power intake tower with openings on three sides protected by steel trashracks; (9) a 760-foot-long, 8-foot-diameter concrete tunnel through the left abutment of the main dam that conveys water from the power intake to the powerhouse; (10) a steel-reinforced, concrete powerhouse with a 6.8-megawatt, vertical-shaft, Francis-type turbine, which discharges to the Bear River at the base of the main dam; (11) a 25-foot-4-inch-high, concrete, vertical intake tower with openings on three sides protected by steel trashracks that receives water for the outlet works; (12) a 350-foot-long, 48-inch-diameter steel pipe that conveys water from the intake structure to a valve chamber for the outlet works; (13) a 400-foot-long, 7.5-foot-diameter concrete-lined horseshoe tunnel that connects to the valve chamber; (14) a 48-inch-diameter, outlet valve with a 500-cubic-feet-per-second release capacity at NMWSE on the downstream face of the main dam that discharges directly into the Bear River; (15) a switchyard adjacent to the powerhouse; (16) two recreation areas with campgrounds, day-use areas, boat ramps, restrooms, and sewage holding ponds; (17) a recreational water system that includes two pumps in the reservoir that deliver water to a treatment facility that is piped to a 60,000-gallon storage tank to supply water to recreation facilities. The estimated average annual generation (2010 to 2017) is 22,637 megawatt-hours.

South Sutter Water District proposes to: (1) Raise the NMWSE of the project reservoir by 5 feet from an elevation of 300 feet to an elevation of 305 feet; (2) raise the existing spillway crest from an elevation of 300 feet to an elevation of 305 feet to accommodate the proposed pool raise; (3) replace and restore several recreation facilities; (4) add an existing 0.25-mile road as a primary project road to access the powerhouse and switchyard; and (5) modify the project boundary to account for the removal of the 1.9-mile-long transmission line from the license in 1991, corrections based on current project operation and maintenance, and changes under the category of a contour 20 feet above the 300-feet NMWSE or proximity of 200-horizontal-feet from the 300-foot NMWSE.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST or MOTION TO INTERVENE; (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. 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.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Deadline for Filing Motions to Intervene and Protests and Requests for Cooperating Agency Status—October 29, 2019

Commission issues Scoping Document 1—January 2020

Scoping Comments due—February 2020

Commission issues Request for Additional Information (if necessary)—March 2020

Commission issues Scoping Document 2 (if necessary)—April 2020

Commission issues Notice of Ready for Environmental Analysis—April 2020

Commission issues EA, Draft EA, or Draft EIS—October 2020

Comments on EA, Draft EA, or Draft EIS due—November 2020

Commission issues Final EA or Final EIS—February 2021

Dated: August 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19275 Filed 9–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD19–6–000]

Commission Information Collection Activities (FERC–725Z); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

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–725Z (Mandatory Reliability Standards: IRO Reliability Standards) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. On June 27, 2019, the Commission published a Notice in the **Federal Register** in Docket No. RD19–6–000 requesting public comments. The Commission received no public comments and is indicating that in the related submittal to OMB.

DATES: Comments on the collection of information are due October 7, 2019.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0276, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. RD19–6–000, 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: FERC–725Z (Mandatory Reliability Standards: IRO Reliability Standards).

OMB Control No.: 1902–0276.

Type of Request: Revisions to the information collection, as discussed in Docket No. RD19–6–000.

Abstract: On July 11, 2019, the Commission issued a Delegated Letter Order, Docket No. RD19–6–000, approving proposed Reliability Standard IRO–002–6 (Reliability Coordination, Monitoring and Analysis), the associated violation risk factors and violation severity levels, and implementation plan. The Reliability Standard was submitted in a joint petition dated May 30, 2019, by the North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC). NERC and WECC stated that the proposed Reliability Standard IRO–002–6 reflects the addition of a regional Variance containing additional requirements applicable to Reliability Coordinators providing service to entities in the Western Interconnection and none of the continent-wide requirements have been changed from currently effective Reliability Standard IRO–002–5.[1] According to the approved implementation plan, the effective date for Reliability Standard IRO–002–6 is January 1, 2020.

Type of Respondents: Reliability coordinators (RC) providing service to entities in the Western Interconnection.

Estimate of Annual Burden:[2] The Commission estimates the changes in the annual public reporting burden and cost[3] as follows.

FERC–725Z—CHANGES DUE TO DOCKET NO. RD19–6–000

Information collection requirements	Number of respondents & type of entity[4] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response ($) (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)
Reporting and Recordkeeping Requirements (continuing in IRO–002–6 [formerly in IRO–002–5])[5].	.....	.....	.....	no change	no change.
Increases, due to the Regional Variance of IRO–002–6[6]					
Reporting (R2 & R3), in Yr. 1	2 (RC)	3	6	52 hrs.; $3,544.84	312 hrs.; $21,269.04.
Reporting (R2 & R3), in Yr. 2 & ongoing	2 (RC)	1	2	480 hrs.; $32,721.60	960 hrs.; $65,443.20.
Total Increase to FERC–725Z in Year 1	.....	.....	.....	.....	312 hrs.; $21,269.04.
Total Increase to FERC–725Z in Year 2 and ongoing.	.....	.....	.....	.....	960 hrs.; $65,443.20.

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: August 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19270 Filed 9–5–19; 8:45 am]

BILLING CODE 6717–01–P

[1] The burden related to continent-wide Reliability Standard IRO–002–5 (Reliability Coordination, Monitoring and Analysis) is included in FERC–725Z (Mandatory Reliability Standards: IRO Reliability Standards, OMB Control No. 1902–0276).

[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, refer to 5 Code of Federal Regulations 1320.3.

[3] The hourly cost figures, for salary plus benefits, for the new standards are based on Bureau of Labor Statistics (BLS) information (at *http://www.bls.gov/oes/current/naics2_22.htm*), as of May 2018, and benefits information for December 2018 (at *https://www.bls.gov/news.release/ecec.nr0.htm*). For salary plus benefits, for reporting requirements, an electrical engineer (code 17–2071) is $68.17/hour; for the recordkeeping requirements, an information and record clerk (code 43–4199) is $40.84/hour.

[4] Our estimates are based on the joint petition which indicates at present, only one reliability coordinator, Peak Reliability, provides reliability coordinator services in the Western Interconnection. In July 2018, Peak Reliability announced that it would cease operations at the end of December 2019. Over the course of 2018 and 2019, several entities have indicated that they will seek certification to perform the reliability coordinator function for their respective footprints in the Western Interconnection. For the purposes of this information collection, the WECC RC certification status was used to estimate the number of entities within the United States making significant progress to become certified Western Interconnection reliability coordinators. The certification progress chart and schedule are posted at the following link: *https://www.wecc.org/EventAnalysisSituationalAwareness/Pages/Certification.aspx.*

[5] The reporting and recordkeeping requirements and the associated burden will continue in IRO–002–6 (burden formerly included in IRO–002–5). The corresponding estimated burden for the 11 RCs continues to be 30 hours per response (or a total estimated burden of 330 hours).

[6] The estimated burden is for the development phase and the ongoing effort to administer/implement the variance requirements.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–61–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date: PJM Interconnection, LLC

On August 30, 2019, the Commission issued an order in Docket No. EL19–61–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether to require PJM Interconnection, L.L.C. (PJM) to revise provisions of Schedule 6 of the PJM Amended and Restated Operating Agreement to reinstate the competitive proposal window process to projects needed solely to address individual transmission owner Form No. 715 local planning criteria. *PJM Interconnection, L.L.C.,* 168 FERC 61,132 (2019).

The refund effective date in Docket No. EL19–61–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL19–61–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: August 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19280 Filed 9–5–19; 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 corporate filings:

Docket Numbers: EC19–104–000.
Applicants: Hartree Partners, LP, Griffith Energy LLC, Cogen Technologies Linden Venture, L.P., East Coast Power Linden Holding, L.L.C., Footprint Power Salem Harbor Development, Brookfield Asset Management Inc.
Description: Response of the Applicants to August 21, 2019 letter requesting additional information.
Filed Date: 8/30/19.
Accession Number: 20190830–5171.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: EC19–130–000.
Applicants: GP Energy Management LLC, Power Supply Services LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of GP Energy Management LLC, et al.
Filed Date: 8/30/19.
Accession Number: 20190830–5109.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: EC19–131–000.
Applicants: NC 102 Project LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of NC 102 Project LLC.
Filed Date: 8/30/19.
Accession Number: 20190830–5229.
Comments Due: 5 p.m. ET 9/20/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1898–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Notice of Effective Date in ER19–1898—Revisions to Enhance MCR Market Design to be effective N/A.
Filed Date: 8/30/19.
Accession Number: 20190830–5010.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2314–000.
Applicants: MidAmerican Central California Transco, LLC.
Description: Response of MidAmerican Energy Company to August 27, 2019 letter requesting additional information.
Filed Date: 8/30/19.
Accession Number: 20190830–5243.
Comments Due: 5 p.m. ET 9/13/19.

Docket Numbers: ER19–2709–000.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Cancellation: Termination of CCSF Hunters Point IA & WDT SA (SA 36) to be effective 8/31/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5000.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2710–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Amendment to add two Hunters Point Projects to CCSF WDT w/rate increase (SA 275) to be effective 9/1/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5001.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2711–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–08–30_SA 2884 OTP-Crowned Ridge 2nd Rev GIA (G736 J442) to be effective 8/9/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5007.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2712–000.
Applicants: Dominion Energy South Carolina, Inc.
Description: Compliance filing: Rate Schedule No. 212 Compliance filing to be effective 9/8/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5063.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2713–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–08–30_ELMP III Tariff revisions to include Day-Ahead committed FSR to be effective 11/1/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5077.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2714–000.
Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Dominion submits revisions to OATT, Att. H–16A re: Allegheny Generating Company to be effective 12/31/9998.
Filed Date: 8/30/19.
Accession Number: 20190830–5094.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2715–000.
Applicants: West Penn Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: West Penn Power Company submits OIA SA No. 4976 to be effective 10/29/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5141.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2716–000.
Applicants: Madison BTM, LLC.
Description: Baseline eTariff Filing: Madison BTM, LLC Initial MBR Application to be effective 11/1/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5142.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2717–000.
Applicants: Madison ESS, LLC.
Description: Baseline eTariff Filing: Madison ESS Initial MBR Application to be effective 11/1/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5143.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2718–000.
Applicants: 527 Energy.
Description: Baseline eTariff Filing: 527 Energy Inc. Initial MBR Application to be effective 9/6/2019.

Filed Date: 8/30/19.
Accession Number: 20190830–5144.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2719–000.
Applicants: Mid-Atlantic Interstate Transmission, LL, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits OIA SA No. 4578 to be effective 10/29/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5178.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2720–000.
Applicants: Kentucky Utilities Company.
Description: § 205(d) Rate Filing: Bardstown RS 185 Nicholasville RS 157 SEPA Amendment to be effective 12/1/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5179.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2721–000.
Applicants: Virginia Electric and Power Company, The Potomac Edison Company, Monongahela Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Dominion, Potomac and Monongahela submit Interconnection Agreement SA No. 4874 to be effective 12/31/9998.
Filed Date: 8/30/19.
Accession Number: 20190830–5181.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2722–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Fast-Start Compliance Docket No. EL18–34 to be effective 12/31/9998.
Filed Date: 8/30/19.
Accession Number: 20190830–5184.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2723–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–08–30_SA 3344 ATXI–TG High Prairie GIA (J541) to be effective 8/16/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5198.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2724–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Sep 2019 Membership Filing to be effective 9/1/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5200.
Comments Due: 5 p.m. ET 9/20/19.

Docket Numbers: ER19–2725–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: SA 397—Scoville Use of Facilities Agreement between IPC, PAC, and DOE to be effective 10/29/2019.
Filed Date: 8/30/19.
Accession Number: 20190830–5254.
Comments Due: 5 p.m. ET 9/20/19.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH19–15–000.
Applicants: PSP FL USA LLC.
Description: PSP FL USA LLC submits FERC 65–A Exemption Notification.
Filed Date: 8/29/19.
Accession Number: 20190829–5162.
Comments Due: 5 p.m. ET 9/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19273 Filed 9–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2972–027]

City of Woonsocket; Notice of Technical Meeting

a. *Date and Time of Meeting:* September 10, 2019 at 10:00 a.m. Eastern Standard Time.

b. *Place:* Telephone conference.

c. *FERC Contact:* Patrick Crile at *patrick.crile@ferc.gov,* or (202) 502–8042.

d. *Purpose of Meeting:* As part of the relicensing of the Woonsocket Falls Project No. 2972 (project), Commission Staff is hosting a technical meeting to discuss: (1) The operation of the U.S. Army Corp of Engineers' (Corps) Woonsocket Falls Dam; (2) the effect of the Corps' operation of the Woonsocket Falls Dam on environmental resources at the project; and (3) the status of the development of an operating plan and Memorandum of Agreement between the City of Woonsocket and the Corps regarding the hydropower project operation.

e. A summary of the meeting will be prepared and filed in the Commission's public file for the project.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please call Patrick Crile at (202) 502–8042 by September 9, 2019, to RSVP and to receive specific instructions on how to participate in the meeting.

Dated: August 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19271 Filed 9–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–46–000]

Commission Information Collection Activities (FERC–604); 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 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved requirements and burden of information collection, FERC–604 (Cash Management Agreements).

DATES: Comments on the collections of information are due November 5, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–46–000) 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: FERC–604 (Cash Management Agreements).

OMB Control No.: 1902–0267.

Type of Request: Three-year extension of the FERC–604 with no changes to the current reporting requirements.

Abstract: Cash management or ''money pool'' programs typically concentrate affiliates' cash assets in joint accounts for the purpose of providing financial flexibility and lowering the cost of borrowing. In a 2001 investigation, FERC staff found that balances in cash management programs affecting FERC-regulated entities totaled approximately $16 billion. Additionally, other investigations revealed large transfers of funds amounting to more than $1 billion) between regulated pipeline affiliates and non-regulated parents whose financial conditions were precarious. The Commission found that these and other fund transfers and the enormous (mostly unregulated) pools of money in cash management programs could detrimentally affect regulated rates.

To protect customers and promote transparency, the Commission issued Order 634–A (2003) requiring entities to formalize in writing and file with the Commission their cash management agreements. At that time, the Commission obtained OMB clearance for this new reporting requirement under the FERC–555 information collection (OMB Control No. 1902–0098). Now, the Commission includes these reporting requirements for cash management agreements under the FERC–604 information collection (OMB Control No. 1902–0267). The Commission implemented these reporting requirements in 18 CFR parts 141.500, 260.400, and 357.5.

Type of Respondents: Public utilities, natural gas companies, and oil pipeline companies.

Estimate of Annual Burden.[1] The Commission estimates the annual public reporting burden for the information collection as:

FERC–604, CASH MANAGEMENT AGREEMENTS

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost[2] per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
35	1	35	1.5 hours; $120.00	52.5 hours; $4,200.00	$120.00

Comments: Comments are invited on: (1) Whether the collections of information are 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 estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 30, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19272 Filed 9–5–19; 8:45 am]

BILLING CODE 6717–01–P

[1] 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. See 5 CFR 1320 for additional information on the definition of information collection burden.

[2] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's FY (Fiscal Year) 2019 average cost $167,091 (for wages plus benefits), $80.00/hour is used.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9046–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 08/26/2019 Through 08/30/2019

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190212, Final Supplement, USFS, MT, Stonewall Vegetation, Review Period Ends: 10/07/2019, Contact: Allen Byrd 406–495–3903

EIS No. 20190213, Final, USFWS, MT, National Bison Range Final Comprehensive Conservation Plan and Environmental Impact Statement, Review Period Ends: 10/07/2019, Contact: Vanessa Fields 406–727–7400, ext. 219

EIS No. 20190214, Draft, AZDOT, AZ, North-South Corridor Study Tier 1 Draft Environmental Impact Statement, Comment Period Ends: 10/29/2019, Contact: Katie Rodriguez 602–712–8858

EIS No. 20190215, Final, CTDOH, CT, Resilient Bridgeport, Review Period Ends: 10/07/2019, Contact: Rebecca French 860–270–8231

EIS No. 20190216, Final, USFWS, BLM, NV, Hycroft Mine Phase II Expansion Project, Review Period Ends: 10/07/2019, Contact: Taylor Grysen 775–623–1500

EIS No. 20190217, Final, USFWS, TX, Authorization of Incidental Take and Implementation of the LCRA Transmission Services Corporation Habitat Conservation Plan, Review Period Ends: 10/07/2019, Contact: Adam Zerrenner 512–490–0057

EIS No. 20190218, Final Supplement, NMFS, AK, Management of the Subsistence Harvest of Northern Fur Seals on St. Paul Island, Alaska, Review Period Ends: 09/26/2019, Contact: Michael Williams 907–271–5117

Under Section 1506.10(d) of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, the U.S. Environmental Protection Agency has Granted a 10-Day Waiver for the above EIS.

Amended Notice

EIS No. 20190179, Final, USFWS, CA, Delta Research Station Project: Estuarine Research Station and Fish Technology Center, Review Period Ends: 09/12/2019, Contact: Robert Clarke 916–414–6581

Revision to FR Notice Published 08/09/2019; Extending the Comment Period from 09/09/2019 to 09/12/2019.

Dated: September 3, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–19257 Filed 9–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9999–45–Region 4]

Public Water System Supervision Program Revision for the State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended approval.

SUMMARY: Notice is hereby given that the State of Mississippi is revising its approved Public Water System Supervision Program. Mississippi has adopted drinking water regulations for the Revised Total Coliform Rule. The Environmental Protection Agency (EPA) has determined that Mississippi's regulations are no less stringent than the federal rule and the revision otherwise meets applicable Safe Drinking Water Act requirements. Therefore, EPA intends to approve this revision to the State of Mississippi's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by October 7, 2019, to the Regional Administrator at the EPA Region 4 street address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by October 7, 2019, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on October 7, 2019. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday (excluding legal holidays) at the following offices: Bureau of Public Water Supply, Mississippi State Department of Health, 570 East Woodrow Wilson Boulevard, Jackson, Mississippi 39215; and the Drinking Water Section, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Dale Froneberger, EPA Region 4, Drinking Water Section, by mail at the Atlanta street address given above, by telephone at (404) 562–9446, or by email at *froneberger.dale@epa.gov*.

SUPPLEMENTARY INFORMATION: The State of Mississippi has submitted a request that EPA approve a revision to the State's Safe Drinking Water Act Public Water System Supervision Program to include the authority to implement and enforce the Revised Total Coliform Rule. For the request to be approved, EPA must find the state regulations codified at 15 Miss. Admin. Code Pt. 20, Subpt. 72, Ch. 1, to be no less stringent than the federal rule codified at 40 CFR part 141. EPA reviewed Mississippi's application using the federal statutory provisions (Section 1413 of the Safe Drinking Water Act), federal regulations (at 40 CFR parts 141 and 142), state regulations, state policies and procedures for implementing the rule, regulatory crosswalk, and EPA regulatory guidance to determine whether the request for revision is approvable. EPA determined that the Mississippi regulations are no less stringent than the corresponding federal rule and the revision otherwise meets applicable Safe Drinking Water Act requirements. Therefore, EPA intends to approve this revision. If EPA does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this approval shall become final and effective on October 7, 2019.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: August 26, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–19306 Filed 9–5–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, September 10, 2019 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: 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. 2019–19336 Filed 9–4–19; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10704]

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 November 5, 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 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–10704 Health Reimbursement Arrangements and Other Account-Based Group Health Plans

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:* Extension of a currently approved collection; *Title of Information Collection:* Health Reimbursement Arrangements and Other Account-Based Group Health Plans; *Use:* On June 20, 2019, the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (collectively, the Departments) issued final regulations titled ''Health Reimbursement Arrangements and Other Account-Based Group Health Plans'' (84 FR 28888) under section 2711 of the PHS Act and the health nondiscrimination provisions of HIPAA, Public Law 104–191 (HIPAA nondiscrimination provisions). The regulations expand the use of health reimbursement arrangements and other account-based group health plans (collectively referred to as HRAs). In general, the regulations expand the use of HRAs by eliminating the current prohibition on integrating HRAs with individual health insurance coverage, thereby permitting employers to offer individual coverage HRAs to employees that can be integrated with individual health insurance coverage or Medicare. Under the regulations employees will be permitted to use amounts in an individual coverage HRA to pay expenses for medical care (including premiums for individual health insurance coverage and Medicare), subject to certain requirements. This information collection includes provisions related to substantiation of individual health insurance coverage (45 CFR 146.123(c)(5)), the notice requirement for individual coverage HRAs (45 CFR 146.123(c)(6)), and notification of termination of coverage (45 CFR 146.123(c)(1)(iii)). *Form Number:* CMS–10704 (OMB control number 0938–1361); *Frequency:* Annually; *Affected Public:* Private Sector, State Governments; *Number of Respondents:* 2,005; *Total Annual Responses:* 273,492; *Total Annual Hours:* 6,016. (For policy questions regarding this collection contact Usree Bandyopadhyay at 410–786–6650.)

Dated: August 30, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–19204 Filed 9–5–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA NUMBER: 93.568]

Reallotment of Fiscal Year 2018 Funds for the Low Income Home Energy Assistance Program (LIHEAP); Correction

AGENCY: Division of Energy Assistance, Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Public Comment; correction.

SUMMARY: This Notice corrects a **Federal Register** Notice of Public Comment published on August 27, 2019 concerning the LIHEAP reallotment for FY 2018. The contact information in the **ADDRESSESS** section needs to be updated.

FOR FURTHER INFORMATION CONTACT: Lauren Christopher, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 330 C Street SW, 5th Floor, Mail Room 5425, Washington, DC 20201. Telephone: (202) 401–4870. Email: *lauren.christopher@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Correction

This Notice corrects a **Federal Register** Notice of Public Comment published on August 27, 2019, 84 FR 44899, page 44899–44900. The contact, title, email address, and fax number have been updated at page 44899, third column, lines 31–32, 37, and 39. (The deadline for submitting comments under the **DATES** section remains unchanged and is still September 26, 2019.) The corrected text is as follows for the **ADDRESSES** section:

ADDRESSES: Comments may be submitted to the attention of: Lauren Christopher, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 330 C Street SW, 5th Floor; Mail Room 5425, Washington, DC 20201. Alternatively, comments may be faxed to (202) 401–5642 or emailed to: *ocs@acf.hhs.gov.*

Statutory Authority: 42 U.S.C. 8626.

Elizabeth Leo,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2019–19310 Filed 9–5–19; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Intent To Award a Single-Source Supplement for the Centers for Independent Living (Subchapter C) Training & Technical Assistance (T&TA) Center Cooperative Agreement

ACTION: Announcing the intent to award a single-source supplement.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the Memorial Hermann Health System for training and technical assistance to the Centers for Independent Living (CILs) that are Subchapter C grantees. The purpose of this project is to develop and provide trainings for CILs, develop and provide TA to CILs, administer peer mentoring for CILs, and refer CILs to other T&TA resources. The administrative supplement for FY 2019 will be in the amount of $351,327, bringing the total award for FY 2019 to $1,634,490.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Regina Blye, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Disabilities, Office of Independent Living: telephone (202)-795–7374; email *regina.blye@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: The additional funding will not be used to begin new projects, but to serve more CILs that are Subchapter C grantees with the same services and opportunities that Memorial Hermann Health System has been providing for some CILs that are Subchapter C grantees.

Program Name: Centers for Independent Living (Subchapter C) Training & Technical Assistance (T&TA) Center.

Recipient: Memorial Hermann Health System.

Period of Performance: The supplemental award will be issued for the third year of the three-year project period of September 30, 2019 through September 29, 2020.

Total Award Amount: $1,634,490 in FY 2019.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: Rehabilitation Act of 1973, as amended, Public Law 114–95, Title 7, Section 721.

Basis for Award: The Memorial Hermann Health System is currently funded to provide T&TA to CILs for the period of September 30, 2017 through September 29, 2020. ACL is required to spend 1.8–2% of ACL's funds appropriated for CILs for FY 2020 on T&TA for CILs. Without this supplement, ACL would spend less than the 1.8% minimum required amount of funds on T&TA in FY 2020. This supplement will result in ACL complying with this minimum requirement of the statute. This additional funding will enable Memorial Hermann Health System to enhance its capacity to provide more trainings, technical assistance, peer mentoring, and referrals for more CILs.

Memorial Hermann Health System is uniquely positioned to complete the work called for under this project as Memorial Hermann Health System presently provides T&TA services to CILs. Many CILs have benefited from the T&TA provided by the Memorial Hermann Health System's many trainings and other resources.

Establishing another entity as a T&TA provider for CILs would probably be inefficient and disruptive. Another entity would not be able to promptly develop and implement a high-quality T&TA project for one year of funds. If this supplement were not provided, ACL would not meet the requirement that a minimum of 1.8% of funds appropriated for CILs be utilized to provide T&TA services to CILs.

Dated: August 30, 2019.

Lance Robertson,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2019–19248 Filed 9–5–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–E–1391]

Determination of Regulatory Review Period for Purposes of Patent Extension; SHINGRIX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SHINGRIX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by November 5, 2019. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 4, 2020. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 5, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 5, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–E–1391 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; SHINGRIX.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product SHINGRIX (Zoster Vaccine Recombinant, Adjuvanted). SHINGRIX is a vaccine indicated for prevention of herpes zoster (shingles) in adults aged 50 years and older. Subsequent to this approval, the USPTO received a patent term restoration application for SHINGRIX (U.S. Patent No. 7,939,084) from GlaxoSmithKline Biologicals SA, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 18, 2018, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of SHINGRIX represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SHINGRIX is 3,257 days. Of this time, 2,892 days occurred during the testing phase of the regulatory review period, while 365 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* November 21, 2008. The applicant claims November 24, 2008, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 21, 2008, which was the first date after receipt of the IND that the

investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* October 21, 2016. FDA has verified the applicant's claim that the biologics license application (BLA) for SHINGRIX (BLA 125614) was initially submitted on October 21, 2016.

3. *The date the application was approved:* October 20, 2017. FDA has verified the applicant's claim that BLA 125614 was approved on October 20, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,361 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: August 28, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–19205 Filed 9–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–0178]

Drugs for Treatment of Partial Onset Seizures: Full Extrapolation of Efficacy From Adults to Pediatric Patients 2 Years of Age and Older; 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 ''Drugs for Treatment of Partial Onset Seizures: Full Extrapolation of Efficacy from Adults to Pediatric Patients 2 Years of Age and Older.'' The guidance provides recommendations to sponsors on the clinical development of drugs for the treatment of partial onset seizures (POS) in pediatric patients. Specifically, this guidance addresses FDA's current thinking regarding clinical development programs that can support extrapolation of the efficacy of drugs approved for the treatment of POS in adults to pediatric patients 2 years of age and older. This guidance finalizes the draft guidance entitled ''Drugs for Treatment of Partial Onset Seizures: Full Extrapolation of Efficacy from Adults to Pediatric Patients 4 Years of Age and Older'' issued on February 16, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on September 6, 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–2018–D–0178 for ''Drugs for Treatment of Partial Onset Seizures: Full Extrapolation of Efficacy from Adults to Pediatric Patients 2 Years of Age and Older.'' 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: Billy Dunn, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–2250.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Drugs for Treatment of Partial Onset Seizures: Full Extrapolation of Efficacy from Adults to Pediatric Patients 2 Years of Age and Older.'' The guidance provides recommendations to sponsors on the clinical development of drugs for the treatment of POS in pediatric patients. Specifically, this guidance addresses FDA's current thinking regarding clinical development programs that can support extrapolation of the efficacy of drugs approved for the treatment of POS in adults to pediatric patients 2 years of age and older. All the public comments received on the draft guidance have been considered and the guidance has been revised as appropriate, along with editorial changes. This guidance finalizes the draft guidance issued on February 16, 2018 (83 FR 7057).

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 ''Drugs for Treatment of Partial Onset Seizures: Full Extrapolation of Efficacy from Adults to Pediatric Patients 2 Years of Age and Older.'' 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 found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014, and the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001.

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: September 3, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–19291 Filed 9–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of vouchers as well as the approval of products redeeming a voucher. FDA has determined that RINVOQ (upadacitnib) approved August 16, 2019, meets the redemption criteria.

FOR FURTHER INFORMATION CONTACT: Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4061, Fax: 301–796–9858, email: *althea.cuff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that RINVOQ (upadacitnib) approved August 16, 2019, meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about RINVOQ (upadacitnib) approved August 16, 2019, go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: September 3, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–19298 Filed 9–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0223]

Humanitarian Device Exemption Program; Guidance for Industry and Food and Drug Administration Staff; 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 entitled ''Humanitarian Device Exemption Program.'' This guidance concerns the humanitarian device exemption (HDE) program as a whole and, among other topics, it explains the criteria FDA considers to determine if ''probable benefit'' has been demonstrated as part of the Agency's

decision-making process regarding marketing authorization for a humanitarian use device (HUD). The guidance also reflects recent amendments to the Federal Food, Drug, and Cosmetic Act (FD&C Act) that affect the HDE program and answers common questions that we receive about the program.

DATES: The announcement of the guidance is published in the **Federal Register** on September 6, 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–2014–D–0223 for ''Humanitarian Device Exemption Program.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Humanitarian Device Exemption Program'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Joshua Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1650, Silver Spring, MD 20993–0002, 301–796–6524; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA developed this guidance to clarify to industry and FDA staff the current review practices for the HDE program. This guidance answers common questions about the HDE program and responds to a requirement in the 21st Century Cures Act (Cures Act) (Pub. L. 114–255) to define the criteria for establishing ''probable benefit'' as that term is used in section 520(m)(2)(C) of the FD&C Act (21 U.S.C. 360j(m)(2)(C)).

This guidance reflects recent amendments to the FD&C Act that affect the HDE program. Specifically, section 3052 of the Cures Act modified the eligibility for an HDE by increasing the threshold number of patients affected by the disease or condition that a HUD is designed to treat or diagnose to ''not more than 8,000 individuals in the United States.'' Further, section 3056 of the Cures Act removed the requirement that institutional review committees, *i.e.,* institutional review boards (IRBs), that supervise the clinical testing of HUDs or approve the use of HUDs in clinical care, be local. Additionally, the FDA Reauthorization Act of 2017 (Pub. L. 115–52) amended section 520(m) of the FD&C Act to provide that the use of a device under an HDE at a facility to treat or diagnose patients may be approved by an IRB or an appropriate local committee. Previously, section 520(m)(4) of the FD&C Act only allowed an IRB to perform this function.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of June 13, 2018 (83 FR 27614). FDA revised the guidance as appropriate in response to

the comments. This guidance supersedes ''Guidance for HDE Holders, Institutional Review Boards (IRBs), Clinical Investigators, and Food and Drug Administration Staff; Humanitarian Device Exemption (HDE) Regulation: Questions and Answers,'' issued July 8, 2010 (available at: *https://www.fda.gov/media/74307/download*).

II. Significance of Guidance

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 the Humanitarian Device Exemption Program. 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.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''Humanitarian Device Exemption Program'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17040 and complete title of the guidance in the request.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part, guidance, or FD&C Act section	Topic	OMB control No.
807, 812, 814	Acceptance of Data from Clinical Investigations for Medical Devices	0910–0741
814	Pediatric Uses of Devices	0910–0748
814, subparts A through E	Premarket Approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
812	Investigational Device Exemption	0910–0078
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo classification process	0910–0844
803	Medical Devices; Medical Device Reporting; Manufacturer Reporting, Importer Reporting, User Facility Reporting, Distributor Reporting.	0910–0437
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073
520(m) of the FD&C Act	Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements.	0910–0661
50, 56	Protection of Human Subjects: Informed Consent; Institutional Review Boards	0910–0755
56	Institutional Review Boards	0910–0130
10	Administrative Practices and Procedures	0910–0191
54	Financial Disclosure by Clinical Investigators	0910–0396

Dated: September 3, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–19290 Filed 9–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC) has scheduled a public meeting. Information about ACHDNC and the agenda for this meeting can be found on the ACHDNC website at: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

DATES: September 24, 2019, 10:00 a.m.–1:00 p.m. Eastern Time (ET).

ADDRESSES: This meeting will be held via webinar. While this meeting is open to the public, advance registration is required. Please visit the ACHDNC website for information on registration: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* The deadline for online registration is 12:00 p.m. ET on September 23, 2019. Instructions on how to access the meeting via webcast will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau (MCHB), HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–0721; or *ACHDNC@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of HHS (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC's recommendations regarding inclusion of additional conditions for screening, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA through the Recommended Uniform Screening Panel (RUSP) pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive

services for plan years (*i.e.,* policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

During the September meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items include a discussion of the role of health information technology within state newborn screening programs and general updates on ACHDNC projects focused on newborn screening. Agenda items are subject to changes as priorities dictate and the final meeting agenda will be available on ACHDNC's website: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* Information about the ACHDNC, a roster of members, as well as past meeting summaries are also available on the ACHDNC website.

Members of the public will have the opportunity to provide comments. Requests to offer oral comments will be accepted in the order they are requested and may be limited as time allows. Public participants may also submit written statements. To submit written comments or request time for an oral comment at the meeting, please register online by 12:00 p.m. ET on September 19, 2019. Visit the ACHDNC website for information on registration, *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* Oral comments will be honored in the order they are requested and may be limited as time allows. Individuals associated with groups or who plan to provide comments on similar topics may be asked to combine their comments and present them through a single representative. No audiovisual presentations are permitted. Written comments should identify the individual's name, address, email, telephone number, professional or organization affiliation, background or area of expertise (*i.e.,* parent, family member, researcher, clinician, public health, etc.) and the topic/subject matter.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–19260 Filed 9–5–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request; Information Request Title: 340B Drug Pricing Program Reporting Requirements, OMB Number 0915–0176—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection, the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR must be received no later than October 7, 2019.

ADDRESSES: Submit your comments, including the ICR title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)—[Extension].

Abstract: Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act ''Limitation on Prices of Drugs Purchased by Covered Entities''), which instructs HHS to enter into a Pharmaceutical Pricing Agreement (PPA) with manufacturers of covered outpatient drugs. Manufacturers are required by section 1927(a)(5)(A) of the Social Security Act to enter into agreements with the Secretary of HHS that comply with section 340B of the PHS Act if they participate in the Medicaid Drug Rebate Program. When a drug manufacturer signs a PPA, it is opting into the 340B Drug Pricing Program (340B Program) and it agrees to the statutory requirement that prices charged for covered outpatient drugs to covered entities will not exceed defined 340B ceiling prices, which are based on quarterly pricing data reported by manufacturers to the Centers for Medicare & Medicaid Services. When an eligible covered entity voluntarily decides to enroll and participate in the 340B Program, it accepts responsibility for ensuring compliance with all provisions of the 340B Program, including all associated costs. Covered entities that choose to participate in the 340B Program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the covered entity.

Section 340B(a)(5)(C) of the PHS Act permits the Secretary of HHS and manufacturers of a covered outpatient drug to conduct audits of covered entities in accordance with by procedures established the Secretary related to the number, duration, and scope of the audits. Manufacturers are permitted to conduct an audit only when there is reasonable cause to believe a violation of section 340B(a)(5)(A) or (B) has occurred. The manufacturer notifies the covered entity in writing when it believes the covered entity has violated these provisions of the 340B Program. If the problem cannot be resolved, the manufacturer will then submit an audit work plan describing the audit and evidence in support of the reasonable cause standard to HRSA, Healthcare Systems Bureau, Office of Pharmacy Affairs (OPA) for review. OPA will review the documentation to determine if reasonable cause exists. Once the audit is completed, the manufacturer will submit copies of the audit report to OPA for review and resolution of the findings, as appropriate. The manufacturer will also submit an informational copy of the audit report to the HHS Office of Inspector General (OIG).

In response to the statutory mandate of section 340B(a)(5)(C) to permit the Secretary or manufacturers to conduct audits of covered entities and because of the potential for disputes involving covered entities and participating drug manufacturers, OPA developed an informal voluntary dispute resolution process for manufacturers and covered

entities. Prior to filing a request for resolution of a dispute with OPA, the parties involved should attempt in good faith to resolve the dispute. All parties involved in the dispute should maintain written documentation as evidence of a good faith attempt to resolve the dispute. To request voluntary dispute resolution of an unresolved dispute, a party submits a written request for a review of the dispute to OPA. A committee appointed to review the documentation will send a letter to the party alleged to have committed a violation. The party will be asked to provide a response to or a rebuttal of the allegations.

HRSA published a notice in 1996 and a policy release in 2011 on manufacturer audit guidelines and the informal dispute resolution process (61 FR 65406 (December 12, 1996) and ''Clarification of Manufacturer Audits of 340B Covered Entities,'' Release No. 2011–3).

Need and Proposed Use of the Information: HRSA is proposing the collection of information related to the manufacturer audit guidelines. These guidelines contain the following reporting/notification elements:

1. Manufacturers should notify the covered entity in writing when it believes a violation has occurred;
2. manufacturers should submit documentation to OPA as evidence of good faith in attempts to resolve a dispute;
3. manufacturers must submit an audit work plan to OPA;
4. manufacturers should submit the audit report to the OPA and informational copies to the HHS OIG; and
5. the covered entity should provide a written response to the audit report.

This information is necessary to ensure the orderly conduct of manufacturer audits. Also, the informal dispute resolution process requires the participating manufacturer or covered entity requesting dispute resolution to provide OPA with a written request. The party alleged to have committed a 340B Program violation may provide a response or rebuttal to OPA. This information is necessary to ensure that the dispute will be resolved in a fair and equitable manner.

A 60-day notice was published in the **Federal Register** on June 18, 2019, vol. 84, No. 117; pp. 28308–09. There was one public comment received. The comment received addressed a policy issue that is beyond the scope of this information collection request; therefore, HRSA will not be addressing the comment in this notice.

Likely Respondents: Drug manufacturers and 340B covered entities.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested during an audit. 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 for both covered entities and manufacturers. The 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
Audits:					
Good faith Resolution [1]	10	1	10	60	600
Audit Notification to Entity [1]	14	1	14	6	84
Audit Workplan [1]	45	1	45	12	540
Audit Report [1]	14	1	14	12	168
Entity Response	14	1	14	12	168
Dispute Resolution:					
Mediation Request	10	4	40	15	600
Rebuttal	10	1	10	28	280
Total	117		147		2,440

[1] Prepared by the manufacturer.

* Since the first public review of the ICR, HRSA has received several audit work plans from manufacturers. HRSA has decided to update its proposed burden hours to reflect the increase in submissions.

RECORDKEEPING BURDEN

Recordkeeping requirement	Number of recordkeepers	Hours of recordkeeping	Total burden
Dispute Records	50	1	50

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–19244 Filed 9–5–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention's (CSAP) Drug Testing Advisory Board (DTAB) will convene via web conference on September 25th, 2019, from 10:00 a.m. EDT to 4:00 p.m. EDT.

The board will meet in closed-session on September 25th, 2019, from 10:00 a.m. EDT to 4:00 p.m. EDT to discuss confidential issues surrounding the proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs (urine specimens, oral fluid, hair), studies from Johns Hopkins Behavioral and Pharmacology Research Unit (BPRU), future direction considering the Farm Bill, and potential recommendations to the Assistant Secretary for Mental Health and Substance Use regarding additional drugs that may be tested for in the future. Therefore, the meeting is closed to the public, as determined by the Assistant Secretary for Mental Health and Substance Use, SAMHSA, in accordance with 5 U.S.C. 552b(c)(4) and (9)(B), and 5 U.S.C. App. 2, Section 10(d).

Meeting registration information can be completed at *http://snacregister.samhsa.gov/MeetingList.aspx.* Web conference and call information will be sent after completing registration. Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees website, *https://www.samhsa.gov/about-us/advisory-councils/meetings* or by contacting the Designated Federal Officer, Matthew Aumen.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: September 25, 2019, from 10:00 a.m. to 4:00 p.m. EDT: CLOSED.

Place: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

Contact: Matthew Aumen, Program Analyst, Center for Substance Abuse Prevention, 5600 Fishers Lane, Room 16E61A, Rockville, Maryland 20857, Telephone: (240) 276–2419, Email: *matthew.aumen@samhsa.hhs.gov.*

Charles P. LoDico,

Chemist.

[FR Doc. 2019–19293 Filed 9–5–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0079]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Replacement/Initial Nonimmigrant Arrival-Departure Document

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 7, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0079 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 6, 2019, at 84 FR 26422, allowing for a 60-day public comment period. USCIS did receive two comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0011 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–102; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* Nonimmigrants temporarily residing in the United States can use this form to request a replacement of a lost, stolen, or mutilated arrival-departure record, or to request a new arrival-departure record, if one was not issued when the nonimmigrant was last admitted but is now in need of such a record. U.S. Citizenship and Immigration Services (USCIS) uses the information provided by the requester to verify eligibility, as well as his or her status, process the request, and issue a new or replacement arrival-departure record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–102 is 4,100 and the estimated hour burden per response is .75 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,075 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,182,440.

Dated: August 30, 2019.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–19207 Filed 9–5–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0060]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Medical Certification for Disability Exceptions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 7, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0060 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 26, 2019, at 84 FR 17870, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0021 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exception.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form N–648; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. USCIS uses the Form N–648 to substantiate a claim for an exception to the requirements of section 312(a) of the Immigration and Nationality Act. By certifying Form N–648, the doctor states that an applicant filing an Application for Naturalization, Form N–400, is unable to complete the English and/or civics requirements because of a physical or developmental disability or mental impairment(s).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–648 is 4,138 and the estimated hour burden per response is 2.42 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 10,014 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual

cost burden associated with this collection of information is $213,107.

Dated: August 30, 2019.

Jerry L Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–19225 Filed 9–5–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R2–ES–2019–0016; FXES11140200000–190–FF02ENEH00]

Final Environmental Impact Statement for the Lower Colorado River Authority's Transmission Services Corporation's Habitat Conservation Plan in Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, under the National Environmental Policy Act, make available the final environmental impact statement analyzing the impacts of issuance of an incidental take permit (ITP) for implementation of the Lower Colorado River Authority's Transmission Services Corporation's Habitat Conservation Plan (HCP). Our decision is to issue a 30-year ITP for implementation of the HCP, which authorizes incidental take of 22 listed and 1 unlisted species under the Endangered Species Act.

DATES: We will finalize a record of decision and issue a permit no sooner than October 7, 2019.

ADDRESSES: You may obtain copies of the documents in the following formats:

- *Electronic:*
  - *http://www.regulations.gov,* in Docket No. FWS–R2–ES–2019–0016;
  - *https://www.fws.gov/southwest/es/AustinTexas/;* or
  - *CD–ROM:* Contact Mr. Adam Zerrenner (see **FOR FURTHER INFORMATION CONTACT**).
- *Hard copy:* You may review the final EIS and HCP at the following locations (by appointment only):
  - Department of the Interior, Natural Resources Library, 1849 C Street NW, Washington, DC 20240. Call 202–208–5815.
  - U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6034, Albuquerque, NM 87102. Call 505–248–6920.
  - U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Call 512–490–0057.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, via U.S. mail at Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; or via phone at 512–490–0057.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of documents related to an incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The final environmental impact statement (EIS) was developed in compliance with the Service's decision-making requirements per the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), and is based on the HCP submitted by the Lower Colorado River Authority's Transmission Services Corporation (LCRA TSC, applicant). We described, fully evaluated, and analyzed three alternatives in detail in our 2019 final EIS.

Our proposed action is to issue an ITP to the applicant under section 10(a)(1)(B) of the ESA that authorizes incidental take of the following federally endangered species:

- Golden-cheeked warbler (*Setophaga* [=*Dendroica*] *chrysoparia*)
- Whooping crane (*Grus Americana*)
- Red-cockaded woodpecker (*Picoides borealis*)
- Ocelot (*Leopardus pardalis*)
- Houston toad (*Anaxyrus* [=*Bufo*] *houstonensis*)
- Barton Springs salamander (*Eurycea sosorum*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)
- Peck's cave amphipod (*Stygobromus pecki*)
- Bee Creek Cave harvestman (*Texella reddelli*)
- Tooth Cave spider (*Tayshaneta* [=*Neoleptoneta*] *myopica*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Madla Cave meshweaver (*Cicurina madla*)
- Government Canyon Bat Cave spider (*Tayshaneta* [=*Neoleptoneta*] *microps*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Ground beetle (no common name; *Rhadine exilis*)
- Ground beetle (no common name; *Rhadine infernalis*)

The ITP would also authorize incidental take of the following federally threatened species:

- Piping plover (*Charadrius melodus*)
- Rufa red knot (*Calidris canutus rufa*)
- Jollyville Plateau salamander (*Eurycea tonkawae*)
- Salado Springs salamander (*Eurycea chisholmensis*)
- San Marcos salamander (*Eurycea nana*)
- Georgetown salamander (*Eurycea naufragia*)

Also included is the following species, which is petitioned for listing:

- Spot-tailed earless lizard (*Holbrookia lacerata*)

Collectively, these are the covered species. The permit area for ITP implementation includes 241 Texas counties (see figure 1 in the HCP). Activities covered by the HCP include construction; operation; upgrade; decommissioning; and repair and maintenance of electrical transmission lines, substations, access roads, and related infrastructure and facilities (covered activities). LCRA TSC activities are classified as (1) new construction, (2) upgrading and decommissioning, (3) operations and maintenance, and (4) emergency responses. The applicant requested a term of 30 years, starting on the date of ITP issuance. The applicant will fully implement avoidance, minimization, and mitigation measures to offset impacts to the covered species according to the HCP and ITP. The applicant has agreed to include the following minimization measures:

1. Meet annually with the Service to discuss upcoming LCRA TSC activities, updated distribution or occurrence information for covered species, opportunities for mitigation, and other concerns;
2. Perform pre-construction natural resource assessments to avoid adverse effects on sensitive environmental features (including species);
3. Implement best practices and other measures to reduce environmental impacts before, during, and after construction;
4. Provide annual training to LCRA TSC staff and contractors working on covered activities regarding the implementation of the HCP and any covered species overlapping with covered activities;
5. Clear and manage vegetation within rights-of-way using aboveground means when practicable;
6. Mark those sections of transmission lines that cross major rivers and out 300 feet from either side;
7. Limit herbicide applications to woody vegetation that is a potential threat to the reliability of LCRA TSC facilities and observe the Service's Southwest Region guidance for pesticide applications;

8. Restore preconstruction contours and revegetate construction sites and any other places where soil is disturbed within rights-of-way;

9. Avoid causing subsurface disturbances to wetlands, riparian areas, and aquatic habitats;

10. Use erosion and sedimentation controls as required by the Texas Commission on Environmental Quality or local ordinances to address storm water discharges during construction;

11. Avoid causing subsurface disturbances to wetlands, riparian areas, and aquatic habitats; and

12. Disturb the least amount of habitat as possible for safely implementing the covered activities.

The mitigation measures include the following commitments:

1. Ratios will be applied at varying levels, depending on direct versus indirect effects, assumed occupied versus confirmed occupied habitat, and when designated critical habitat or conservation lands benefitting the species are impacted.

2. Mitigation will occur through one or more of the following:

a. A Service-approved conservation bank, with priority given to banks that have the covered activities within their service area;

b. Service-approved in-lieu fee programs;

c. Third-party conservation providers implementing Service-approved conservation actions; or

d. Permittee-implemented Service-approved conservation actions.

3. In the unlikely event that no practicable opportunities exist for carrying out mitigation obligations in connection with a covered activity, LCRA TSC will work with the Service to identify other types of practicable mitigation solutions for the covered species, which may include but are not limited to:

a. Approval of alternate means of mitigation delivery, such as translocating or repatriating covered species, enhancement of functional habitat for covered species, or restoration of degraded habitat for covered species;

b. Approval of methods to reduce or eliminate other threats to the covered species; and

c. Funding for research or studies regarding the covered species that further scientific understanding of how to manage and conserve those species.

4. If LCRA TSC starts a covered activity prior to mitigating, they will mitigate an additional 25 percent plus an additional 5 percent each year that mitigation is delayed.

5. The Service will review and approve all mitigation, except where covered activities occur within the service area of a conservation bank for the impacted covered species.

6. If a covered activity will take more than one covered species within the same location, then:

a. The mitigation can also count towards those species, if they are all present within the same location on the mitigation lands (*i.e.* stacked); and

b. A stacked mitigation credit can only be used once, regardless whether all of the species within the mitigation were impacted by the covered activity.

In addition to this notice, the Environmental Protection Agency (EPA) is publishing a notice announcing the EIS, as required under the Clean Air Act, section 309 (42 U.S.C. 7401 *et seq.;* see EPA's Role in the EIS Process below).

Background

The applicant has applied for an ITP under the ESA that would authorize incidental take of the covered species and would be in effect for a period of 30 years. The proposed incidental take of the covered species would occur from lawful non-Federal activities from the applicant's covered activities in the permit area. The HCP includes counties where LCRA TSC currently has facilities, counties LCRA TSC expects they may have future facilities, and a buffer around those counties. The final EIS considers the direct, indirect, and cumulative effects of implementing the HCP, including measures to minimize and mitigate such impacts to the maximum extent practicable.

Section 9 of the ESA and its implementing regulations in title 50 of the Code of Federal Regulations (CFR) prohibit ''take'' of fish and wildlife species listed as endangered or threatened under the ESA. The ESA defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct'' (16 U.S.C. 1533). The term ''harm'' is defined in the regulations as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). We may, however, under specified circumstances, issue permits that allow the take of federally listed species, provided the take is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing ITPs for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

We published a notice of intent (NOI) in the **Federal Register** on July 11, 2017 (82 FR 35539), to determine the scope of issues and alternatives to be addressed in the EIS. Publication of the NOI initiated a 30-day scoping period, during which the Service solicited comments regarding potential impacts associated with and identification of alternatives to the proposed Federal action for the Service to address in their NEPA environmental review document. The Service held scoping meetings in Corpus Christi, Austin, Midland, and College Station, Texas, in August 2017. The scoping comment period closed on August 30, 2017.

Nine individuals attended scoping meetings, and the Katy Prairie Conservancy and National Park Service each submitted a comment letter. The Service considered the scoping comments and incorporated ideas into the environmental effects analysis, as applicable.

We published a notice of receipt of the application and availability of the HCP and a draft EIS in the **Federal Register** on April 29, 2019 (84 FR 18075). The public comment period closed on June 13, 2019. We received nine comments, one from the Texas Historical Commission with only minor editing suggestions, one from the Environmental Protection Agency (EPA) with no comment, four from tribes (three with no comments or concerns, and one requesting to be a consulting party), one from Texas Parks and Wildlife Department, and two comments that were not substantive. Appendix B of the final EIS provides the comments, responses, and information on where the Service made changes to the HCP/EIS.

Decision

We intend to issue an ITP allowing the applicant to implement the proposed HCP, identified as the preferred alternative in the final EIS. We determined that the preferred alternative best balances the protection and management of habitat for the covered species, while allowing for the covered activities to be authorized under a longer-term permit. Considerations used in this decision include: (1) Minimization and mitigation measures that will benefit the covered species by permanently preserving more acreage than is removed, (2) the focus of mitigation in single parcels when acreage impacted will likely come from patches spanning linear projects, (3) mitigation measures that will fully offset anticipated impacts to the covered species and will contribute to their recovery, and (4) that the HCP is consistent with species

recovery plans or outlines, noting that some species do not have either.

EPA's Role in the EIS Process

In addition to this notice, EPA is publishing a notice in the **Federal Register** announcing the final EIS for LCRA TSC's final HCP, as required under the Clean Air Act, section 309. The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions in EISs.

The EPA also serves as the repository (EIS database) for EISs that Federal agencies prepare. All EISs must be filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**. For more information, see *https://www.epa.gov/nepa.* You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy Lueders,

Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2019–19253 Filed 9–5–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L63100000.HD0000. 19XL1116AF.HAG 19–0127]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, October 7, 2019.

ADDRESSES: A copy of the plats may be obtained from the public room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, 503–808–6124, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

WILLAMETTE MERIDIAN, OREGON

T. 38 S, R. 8 W, accepted August 9, 2019
T. 12 S, R. 1 E, accepted August 9, 2019
T. 35 S, R. 7 W, accepted August 9, 2019
T. 21 S, R. 11 E, accepted August 9, 2019

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following the resolution of all protests of the plat. Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2019–19254 Filed 9–5–19; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fish and Wildlife Service

[51100000.GN0000.LVEMF1503760 .LLNVW03000.15x MO# 4500136770]

Notice of Availability of the Final Environmental Impact Statement for the Proposed Hycroft Mine Phase II Expansion Project, Humboldt and Pershing Counties, Nevada

AGENCY: Bureau of Land Management, and Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Black Rock Field Office, Winnemucca, Nevada, and the U.S. Fish and Wildlife Service (USFWS) have prepared a joint Final Environmental Impact Statement (EIS) and by this notice are announcing the beginning of the availability of the Final EIS. The BLM is the lead agency in development of the Final EIS and has evaluated Hycroft Resource and Development, Inc.'s (HRDI's) request for the proposed expansion of their operations at the existing Hycroft Mine. The USFWS is a coordinating agency with the BLM on the development of this EIS and has evaluated the applicant's Eagle Conservation Plan (ECP), which describes HRDI's request to remove inactive (*i.e.,* outside the nesting season) eagle nests and for a 30-year incidental take permit for golden eagles under the Bald and Golden Eagle Protection Act (Eagle Act).

DATES: This notice initiates the availability of the Final EIS. No ROD will issue for 30 days past the publication of this NOA.

ADDRESSES: To access the Final EIS and if more information is required please reach out the appropriate contact below

Project Mining Expansion:

- *Website: https://go.usa.gov/xyu54*
- *Email: wfoweb@blm.gov*
- *Fax:* (775) 623–1503
- *Mail:* 5100 East Winnemucca Boulevard, Winnemucca, NV 89445

Eagle Take Permit:

- *Email: fw8_eaglepermits@fws.gov*
- *Fax:* (916) 414–6486
- *Mail:* 2800 Cottage Way, W–2605, Sacramento, CA 95825

FOR FURTHER INFORMATION CONTACT: For questions about the proposed mine expansion, contact Taylor Grysen—BLM Project Manager, telephone: (775) 623–1500, address: 5100 East Winnemucca Boulevard, Winnemucca, NV 89445. For questions about the eagle take permit contact: Heather Beeler—USFWS Project Manager, telephone: (916) 414–6651, address: 2800 Cottage Way, W–2605, Sacramento, CA 95825. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: HRDI has proposed an expansion to their operations at the existing Hycroft Mine, which is located approximately 55 miles west of Winnemucca, Nevada, in Humboldt and Pershing Counties. The Hycroft Mine Phase II Expansion proposed action proposes to increase the authorized Plan of Operations boundary to 27,835 acres, of which 26,082 acres would be on BLM-administered public lands. Under the project as proposed by HRDI, the surface disturbance would increase by 8,737 acres, from 6,144 acres to 14,881 acres, which includes 13,141 acres located on land administered by the BLM Black Rock Field Office. Surface disturbance on private land would decrease by 44 acres, from 1,784 acres to 1,740 acres. The proposed project would include the following activities: Expanding the authorized Plan of Operations boundary to the east; extending mining and ore processing activities to 2039; increasing the rate of process water pumping and extending until 2041; constructing and operating the Northeast Tailings Storage Facility (TSF) and associated pipeline corridor and haul road; constructing and operating the North Heap Leach Facility (HLF) East expansion and associated solution ponds; expanding the existing Brimstone Pit below the pre-mining groundwater table; conducting active dewatering of the Brimstone Pit through the installation and operation of dewatering wells; conducting passive dewatering within the expanded pit footprint; expanding the South Waste Rock Facility (WRF); modifying the approved land use in the South Processing Complex to allow for the option of constructing the Southwest WRF in place of the complex, if desired; modifying waste backfill plans with respect to the proposed mining plan; expanding haul and secondary roads around the pits, WRFs, HLFs, and TSF; modifying the milling operation to process ore in an ambient oxidation and leaching process; constructing and operating an oxygen plant; constructing stormwater diversions, installing culverts, and other stormwater controls; constructing growth media stockpiles; incorporating four HRDI rights-of-way (ROWs) (microwave repeater site and road [NVN046292], Floka access road [NVN054893], buried pipeline, wells, power distribution and access roads [NVN046564], and road and water pipeline [NVN039119]) that exist wholly within the authorized Plan boundary into the amendment to the Plan and relinquish the ROWs with the BLM; continuing use of the well field ROW; relocating rangeland improvement facilities within the footprint of the Northeast TSF; rerouting Rosebud Road around the Northeast TSF; reallocating 10 acres of exploration disturbance on private land to public land; and implementing the authorized and proposed additional applicant-committed Environmental Protection Measures to new facilities and activities. Alternative A would result in approximately 4,800 acres less surface disturbance, and the plan boundary would be nearly 7,800 acres less than the proposed action. Under Alternative A, all components of the proposed action would be the same except the Northeast TSF and all associated infrastructure would not be constructed, rather, the Southwest TSF would be constructed instead with all associated infrastructure. Alternative A would include an expansion to the authorized Plan of Operations boundary to accommodate the Southwest TSF (Alternative A Expansion). The Alternative A Expansion of the Plan of Operations boundary would encompass approximately 5,310 acres of public lands administered by the BLM. Alternative A would expand the authorized Project boundary, which encompasses 14,753 acres, by 5,310 acres of public lands administered by the BLM, for a combined total of 20,063 acres. Under Alternative A, HRDI would construct and operate an approximately 2,426-acre facility (dam and tails surface) known as the Southwest TSF to accommodate tailings generated by mining sulfide ore below the groundwater table and processed in the authorized mill facility located on private land.

The Winnemucca District, Black Rock Field Office has selected Alternative A, as outlined in Chapter 2 of the Draft EIS, including the applicant's committed EPMs specified in the Draft EIS Section 5.3 and all of the mitigation specified in the Draft EIS Section 5.2 for Alternative A. This aligns with the USFWS Eagle Take Permit Alternative A (USFWS Alternative A Eagle Permit Decision) as the Preferred Action based on the outcome of the Final EIS. HRDI's Eagle Conservation Plan contains commitments to avoid, minimize, and mitigate adverse effects on golden eagles resulting from the implementation of the Project. There are no new anticipated significant impacts on the cumulative effects of the area since a mine already exists in the area; impacting the air quality, visual resources, and the cultural viewshed of the area.

Ten alternatives addressing pit lake concerns, mine feature concerns, and eagle permit concerns were considered but eliminated from analysis for the inability meet the project's purpose and need, technical feasibility, the inability to reduce environmental impacts and for not being in compliance with regulatory and legal guidance.

In addition, HRDI has submitted an application to the USFWS requesting authorization to remove inactive golden eagle nests and for incidental take under the Eagle Act for operational activities associated with both the BLM's currently authorized mining activities and proposed expansion Project. The Project would also affect golden eagle nests and territories. HRDI's ECP is the foundation of the permit application and contains commitments to avoid, minimize, and mitigate adverse effects on golden eagles resulting from the implementation of the Project.

Through scoping the BLM has identified, and through the EIS the agencies have analyzed impacts to the following resources areas: Air and atmospheric resources; cultural resources (including National Historic Trails); noxious weeds, invasive species, and nonnative species; migratory birds; Native American religious concerns; wastes and materials (hazardous and solid); water quality (surface and ground); geology, minerals, and energy; golden eagles; lands and realty; paleontology; rangeland management; recreation; social values and economics; soils; special status species (plants and

wildlife); transportation and access; vegetation; visual resources; and wildlife. The EIS describes and analyzes the proposed Project's direct, indirect, and cumulative impacts on all affected resources.

In addition to the Mine Expansion Proposed Action (BLM Decision) and the Eagle Take Permit Proposed Action (USFWS Eagle Permit Decision), the following alternatives are also analyzed in the EIS: The Mine Expansion Alternative A (BLM Alternative Decision), referred to as Alternative A; Eagle Take Permit Alternative A (USFWS Alternative A Eagle Permit Decision); the BLM No Action Alternative; and the USFWS No Action Alternative.

On December 30, 2014, an initial Notice of Intent (NOI) was published in the **Federal Register** inviting scoping comments on the proposed action. A total of 14 scoping comment letters were received for the December 20, 2014, through January 29, 2015, public scoping period. On September 22, 2017, a second NOI was published in the **Federal Register** inviting scoping comments on the requested eagle take permit as related to the Eagle Take Permit Proposed Action (USFWS Eagle Permit Decision) and the ECP. A total of nine scoping comment letters were received during the September 22, 2017, through November 21, 2017, public scoping period. Concerns raised included impacts to air quality, cultural resources, environmental justice, lands, realty and transportation, Native American religious concerns, rangeland management, recreation, soils, visual resources, wastes and materials (hazardous and solid), water resources, vegetation, and wildlife. A total of nine public comment letters were received during the May 17, 2019, through July 14, 2019, public comment period. Concerns raised included impacts to air quality, cultural resources, environmental justice, Native American religious concerns, rangeland management, recreation, soils, visual resources, wastes and materials (hazardous and solid), water resources, vegetation, and wildlife. Further clarification is provided in the Final EIS addressing these comments.

The BLM has utilized and coordinated the NEPA scoping and comment process to help fulfill the public involvement requirements under the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3)—and continues to do so. The information about historic and cultural resources within the area potentially affected by the proposed Project has assisted the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Title 54 of the NHPA.

The BLM and USFWS have consulted and continue to consult with numerous Native Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts to Indian trust assets and potential impacts to cultural resources have been analyzed in the EIS.

Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Project that the BLM and USFWS have evaluated, are notified of the availability of the Final EIS. No ROD will issue for 30 days past the publication of this NOA.

Authority: 40 CFR 1501.7.

Ester McCullough,

District Manager, Winnemucca District Office.

Jody Holzworth,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2019–19389 Filed 9–5–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000.BX0000 16XL5017AR; MO#4500136444]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), California State Office, Sacramento, California, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Fish and Wildlife Service, are necessary for the management of these lands.

DATES: Unless there are protests to this action, the plats described in this notice will be filed on October 7, 2019.

ADDRESSES: You may submit written protests to the BLM California State Office, Cadastral Survey, 2800 Cottage Way, W–1623, Sacramento, CA 95825. A copy of the plats may be obtained from the BLM California State Office, Public Room, 2800 Cottage Way, W–1623, Sacramento, California 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Jon Kehler, Chief, Branch of Cadastral Survey, Bureau of Land Management, California State Office, 2800 Cottage Way, W–1623, Sacramento, California 95825; 1–916–978–4323; *jkehler@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Mount Diablo Meridian, California

T. 47 N., R. 4 E., dependent resurvey and subdivision of section 6, for Group No. 1765, accepted July 29, 2019.

T. 42 N., R. 12 E., dependent resurvey, subdivision and metes-and-bounds survey, for Group No. 1746, accepted August 1, 2019.

A person or party who wishes to protest one or more plats of survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. Any notice of protest received after the due date will be untimely and will not be considered. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed at the same address within 30 calendar days after the notice of protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available at any time. While you can ask the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C., Chapter 3.

Jon L. Kehler,

Chief Cadastral Surveyor.

[FR Doc. 2019–19250 Filed 9–5–19; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–28573; PPWODIREP0; PPMVSCS1Y.Y00000]

Notice of the September 24th, 2019, Meeting of the Made in America Outdoor Recreation Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service is hereby giving notice that the Made in America Outdoor Recreation Advisory Committee (Committee) will meet as noted below.

DATES: The meeting will be held on Tuesday, September 24, 2019, from 9:00 a.m. to 5:00 p.m., EST.

ADDRESSES: The meeting will be conducted in Room 7061 of the Stewart Lee Udall Department of the Interior Building, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Designated Federal Officer for the Made in America Outdoor Recreation Advisory Committee, Office of Policy, National Park Service, 1849 C Street NW, Mail Stop 2659, Washington, DC 20240, telephone number 202–513–7053, or email *itmd_joshuawinchell@nps.gov.*

SUPPLEMENTARY INFORMATION: The Committee has been established by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906, and is regulated by the Federal Advisory Committee Act.

The Committee will convene its meeting at 9:00 a.m., and adjourn at 5:00 p.m. The Committee will meet to discuss topics related to public-private partnerships across all public lands, expanding access to and improving infrastructure on public lands and waterways, improving recreational visitor experiences, developing and deploying infrastructure improvements, and other business. The meeting agenda will be posted to the committee's website at: *https://www.nps.gov/orgs/1892/made-in-america-rac.htm.*

The meeting is open to the public, but preregistration is required due to security requirements in the building and limited seating. Any individual who wishes to attend the meeting should register via email at Joshua Winchell *itmd_joshuawinchell@nps.gov,* or telephone (202) 513–7053. Interested persons may choose to make a public comment at the meeting during the designated time for this purpose. Members of the public may also choose to submit written comments by mailing them to Joshua Winchell, Designated Federal Officer for the Made in America Outdoor Recreation Advisory Committee, Office of Policy, National Park Service, 1849 C Street NW, MS 2659, Washington, DC 20240, or via email at *itmd_joshuawinchell@nps.gov.* Individuals who plan to attend and need special assistance, such as sign language interpretation, should contact the NPS as provided above.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2019–19299 Filed 9–5–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jeffrey Stein, M.D.; Decision and Order

On February 26, 2019, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Jeffrey Stein, M.D. (hereinafter, Respondent) of New York, NY. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration No. FS6587868 on the ground that Respondent was ''mandatorily excluded . . . from participation in Medicare, Medicaid, and all Federal health care programs for a minimum period of ten years pursuant to 42 U.S.C. 1320a–7(a)''; and that such exclusion ''warrants revocation of [Respondent's] registration pursuant to 21 U.S.C. 824(a)(5).'' *Id.* at 2.

Specifically, the OSC alleged that, on July 31, 2015, the United States District Court for the Southern District of New York (hereinafter, SDNY) issued a judgment against Respondent ''based on [Respondent's] guilty plea to 'Corruptly Endeavoring to Obstruct and Impede the Due Administration of the Internal Revenue Laws' in violation of 26 U.S.C. 7212(a) and 'Tax Evasion' in violation of 26 U.S.C. 7201. *U.S.* v. *Jeffrey S. Stein,* No. 1:15CR00195–01(DLC) (S.D.N.Y. filed July 31, 2015).'' OSC, at 2. The OSC further alleged that ''based on [such] conviction, the U.S. Department of Health and Human Services, Office of Inspector General (''HHS/OIG''), by letter dated December 29, 2017, mandatorily excluded [Respondent] from participation in Medicare, Medicaid, and all Federal health care programs for a minimum period of ten years pursuant to 42 U.S.C. 1320a–7(a), effective January 18, 2018.'' *Id.*

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

The record includes a Form DEA–12 (8–02) ''Receipt for Cash or Other Items,'' dated February 28, 2019, which indicates that the OSC was provided to Respondent and the form is signed by ''Jeffrey Stein.'' Request for Final Agency Action (hereinafter, RFAA) Ex. 6.

By letter dated March 21, 2019, Respondent submitted a written statement (hereinafter, Respondent Statement) in response to the OSC, in which he ''waive[d] a hearing and submit[ted a] written statement regarding [his] position on the matters of fact and law involved in this matter.'' RFAA Ex. 7 (Respondent Statement), at 1.

On May 31, 2019, the Government submitted an RFAA, in which it argued, among other things, that ''Section 824(a)(5) should be read as requiring revocation of a respondent's DEA certificate of registration, upon an adequate showing of the factual predicate, at least for the duration of the mandatory exclusion.'' RFAA, at 4.

I issue this Decision and Order based on the record and brief submitted by the Government in the RFAA and the Respondent Statement, which constitute the entire record before me. 21 CFR 1301.43(e).

Findings of Fact

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. FS6587868 at the registered address of 1385 York Avenue, Suite 3B, New York, NY 10021–3911. RFAA Ex. 1 (Certificate

of Registration History), at 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Respondent's registration expires on February 29, 2020, and currently is ''in an active pending status.'' *Id.*

Respondent's Exclusion

The evidence in the record demonstrates that judgment was entered following a guilty plea on July 31, 2015, in the SDNY by Respondent for '' 'Corruptly Endeavoring to Obstruct and Impede the Due Administration of the Internal Revenue Laws' in violation of 26 U.S.C. 7212(a) and 'Tax Evasion' in violation of 26 U.S.C. 7210. *U.S.* v. *Jeffrey Stein,* No. 1:15CR00195–01(DLC) (S.D.N.Y. filed July 31, 2015).'' RFAA, at 3; *see also* RFAA Ex. 4 (Judgment). Respondent pled guilty to both counts of criminal violations of the Internal Revenue Code listed in the Information. RFAA Ex. 4, at 1. The first count alleged that Respondent and his wife ''provided various false and fictitious information to [his] Accountant in order to fraudulently reduce the amount of taxes they would have to pay to the IRS.'' RFAA Ex. 3 (Information), at 4. Further, after notification by the Internal Revenue Service (hereinafter, IRS) of an audit, Respondent and his wife, ''created and provided to the Accountant various fabricated and fictitious documents and information as part of a corrupt effort to convince the IRS Auditor that the expenses claimed . . . were legitimate.'' *Id.* at 7. The Information additionally alleged that Respondent, ''[u]sing the names of four disabled military veterans (including two former patients) whose identities he obtained as a result of his work for the V.A., . . . created bogus invoices in the names of those veterans.'' *Id.*

By letter dated December 29, 2017, the HHS OIG notified Respondent of his exclusion from Medicare, Medicaid, and all federal health care programs under 42 U.S.C. 1320a–7(a) for a minimum period of ten years based on Respondent's felony convictions in SDNY. RFAA Ex. 5 (hereinafter, Exclusion Letter), at 1. The Exclusion Letter stated that the exclusion would become effective twenty days from the date of the letter, or January 18, 2018,[1] and notified Respondent of his appeal rights. *Id.* at 1–2.

Respondent admits to the guilty plea and to the HHS exclusion; however, he asserts that he appealed and that an HHS Administrative Law Judge sustained the exclusion, but reduced the period of exclusion to eight years ''based on the I.G. having issued an amended exclusion letter removing 42 CFR 1001.102(b)(9) as an aggravating factor and adjusting the term of exclusion from ten to eight years.'' Respondent Statement, at 2.

Respondent included the HHS Administrative Law Judge's decision citation in his written statement. *Id.* at 2. The ALJ issued an opinion on August 3, 2018, upholding Respondent's exclusion and reducing it.[2] In particular, she found that his crimes were committed in connection with the delivery of a health care item or service to warrant mandatory exclusion because:

> Petitioner abused his position by appropriating the personal information of four veterans (including two individuals to whom he had provided health care services) to further his tax evasion scheme. Petitioner would not have been in a position to misuse the veterans' personal information had he not been part of the chain of delivery of V.A. health care benefits.

Jeffrey S. Stein, M.D., Department Appeals Board No. CR5153, at 5 (2018) (*available at: https://www.hhs.gov/about/agencies/dab/decisions/alj-decisions/2018/alj-cr5153/index.html*) (hereinafter HHS Appeals Board). The ALJ further found that:

> Petitioner used patient information, to which he had access based on his position of trust as a V.A. physician, to create fraudulent invoices in an attempt to cover up his income tax evasion. . . . These factors underscore the seriousness of his dishonest scheme. It is not unreasonable to infer . . . that he may pose a risk to the integrity of patient data systems.

Id. at 6.

Respondent asserts that ''the two counts to which [he] pled guilty . . . pertained solely to [his] personal income tax statements'' and that ''[t]here were never any allegations of impropriety with respect to my medical practice or the furnishing of or billing for medical care, services or supplies.'' Respondent Statement, at 2. Additionally, Respondent states that ''full restitution of all taxes owed to the Federal government was made before the date of [his] sentencing''[3] and he has ''completed serving [his] sentence of 18 months and [he is] now once again a law-abiding person who continues to contribute to the well being of [his] community.'' *Id.*

Respondent submitted evidence related to the temporary suspension of his medical license in New York and subsequent censure, reprimand, and reinstatement by the Department of Health State Board for Professional Medical Conduct (hereinafter, BPMC) through a Hearing Committee (hereinafter, Committee) Determination and Order, dated December 15, 2016. Respondent Statement Ex. 2; *see also* Respondent Statement, at 3.

The BPMC Committee based its decision on several factors. ''Importantly, Respondent's crimes did not affect his clinical competence or quality of patient care. The Committee did not feel that [he] was a threat to the public. Moreover, the Committee acknowledged an exemplary surgical career and stable family life.'' Respondent Statement Ex. 2 (BPMC Hearing Committee Determination and Order), at 3. The Committee further cited to seventeen letters, which ''described Respondent as a talented, compassionate physician and trustworthy person.'' *Id.* Respondent additionally testified in front of the Committee, during which ''the Committee learned of [his] genuine connection to his patients'' and noted that it ''appreciated [his] sincere sense of remorse and repentance for his actions. Respondent accepted full responsibility for his conduct and the Committee felt that he has learned from his mistakes.'' *Id.*

In sum, based on all of the evidence in the record, I find that the HHS OIG excluded Respondent from Medicare, Medicaid, and all federal health care programs under 42 U.S.C. 1320a–7(a) for eight years effective January 18, 2018, based on Respondent's conviction of two federal income tax-related felonies in the SDNY.

Discussion

Under Section 824(a) of the Controlled Substances Act (hereinafter, CSA), a registration ''may be suspended or revoked'' upon a finding of one or more of five grounds. 21 U.S.C. 824. The ground in 21 U.S.C. 824(a)(5) requires that the registrant ''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* 42 U.S.C. 1320a–7(a) provides a list of four predicate offenses for which exclusion from Medicare, Medicaid and federal health care programs is mandatory and sets out mandatory timeframes for such exclusion. *Id.* Respondent admits that

[1] The date of exclusion is 20 days from the date of the letter. RFAA Ex. 5, at 1.

[2] I believe that it is appropriate to take note of the full contents of this decision, as it was referenced on page 2 of Respondent's Statement. *See, e.g., Bell Atl. Corp.* v. *Twombly,* 550 U.S. 544, 568 n.13 (2007) (stating that courts may ''take notice of the full contents'' of published documents ''referenced in the complaint'' (citing Fed. R. Evid. 201)).

[3] Respondent appended to his Respondent Statement a Satisfaction of Judgment demonstrating that his restitution was satisfied. Respondent Statement Ex. 1 (Satisfaction of Judgment), at 1.

the HHS OIG mandatorily excluded him and, as such, there is no dispute in the record about this fact. Respondent Statement, at 2; *see also* RFAA, at Ex. 5.

In pursuing revocation or suspension of Respondent's registration, the Government makes no argument on the merits of Respondent's mitigating evidence, but elects to make a legal argument that, instead of reviewing Respondent's individual circumstances, the Agency should read 21 U.S.C. 824(a)(5) to *require* revocation as long as the basis for revocation—here, exclusion from federal health care programs—is adequately shown. RFAA, at 4. In making this argument, the Government seems to be relying on two notions:

1. That ''the best reading of the statutory language in 21 U.S.C. 824(a)(5) and 42 U.S.C. 1320a–7(a) recognizes that Congress intended to carve out a specific set of circumstances (*i.e.,* a criminal conviction for a specific set of crimes) that it found particularly serious. Therefore, . . . Section 824(a)(5) should be read as requiring revocation.'' *Id.*

2. That, due to what the Government perceives as the Agency's inconsistency in evaluating revocations under Section 824(a)(5), particularly where the predicate crime has no nexus to controlled substances, the Agency should instead summarily revoke or suspend all registrants who have been excluded from federal health care programs for, at least, the duration of the exclusion. *Id.* at 6–9.

I will address each of these issues separately prior to addressing the facts I found.

1. The Government Has Not Provided a Reasonable Interpretation of the CSA as Mandating Suspension or Revocation Under Section 824(a)(5)

The Government's argument in proffering what it deems the ''best reading'' of the CSA is that in mandating exclusion from federal health care programs for certain predicate crimes in Section 1320a–7(a) of Title 42, Congress intended to carve out a particular set of crimes that it found particularly serious. RFAA, at 4. However, no further support for this reading of the statute is offered.

Such a reading would be a significant departure from past Agency decisions. Notably, in *Dinorah Drug Store, Inc.,* 61 FR 15972, 15974 (1996), ''the Deputy Administrator agree[d] with Judge Tenney's conclusion that the denial of registration under Section 824(a)(5) is discretionary.'' Furthermore, the Government has not cited to, nor has there been, another mandatory exclusion case that has held that I must revoke or suspend on the basis of the mere finding of a mandatory exclusion under 42 U.S.C. 1320a–7(a), as is demonstrated by the fact that cases on this section have carefully considered mitigating evidence provided by the respondent. *See, e.g., Mohammad Asgar, M.D.,* 83 FR 29569 (2018); *George D. Osafo, M.D.,* 58 FR 37508 (1993).

The Government correctly notes, however, that under the third of the five grounds for revocation or suspension in Section 824(a), the Agency interprets the statute to require revocation or suspension once there is a conclusive finding that the registrant lacks authority to practice medicine and dispense controlled substances in the state of registration. 21 U.S.C. 824(a)(3). This procedure is unique amongst the five grounds listed in Section 824(a) and is rooted in two provisions of the CSA. The two provisions, when read together, lead to the ineluctable conclusion that the CSA leaves the decision maker no discretion as to sanction when such lack of authority is established. 21 U.S.C. 802(21) (defining ''practitioner'' to require a license to dispense controlled substances in the state of registration) and 21 U.S.C. 823(f) (establishing authorization to dispense controlled substances as a prerequisite for the issuance of a registration); *see, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616 (1978).

Unlike Section 824(a)(3), the Government has proffered no reasonable statutory basis in the CSA, or otherwise, to read 824(a)(5) to require automatic revocation if a practitioner has been mandatorily excluded from Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a–7(a). The Government implies that the mandatory nature of the statute that controls the HHS Secretary in excluding an individual from participation in any federal health care program also negates the discretion of the Attorney General in applying the CSA. RFAA, at 10. However, in arguing this interpretation of the CSA, the Government would have to demonstrate that the interpretation is not ''in excess of statutory jurisdiction, authority, or limitations or short of statutory right.'' 5 U.S.C. 706(2)(C). In order for the Agency to support such a reading, the Government would at the very least have to demonstrate that the statute is ambiguous and that the interpretation ''is based on a permissible construction of the statute.'' *Chevron U.S.A.* v. *Nat. Resources Def. Council,* 467 U.S. 837, 843 (1984).

The Medicare and Medicaid Patient and Program Protection Act of 1987 (hereinafter, Medicare Protection Act) enacted the mandatory and permissive exclusions in question and also simultaneously added Section 824(a)(5) into the CSA. Medicare Protection Act, Public Law 100–93, 8(j), 101 Stat. 680, 695 (1987). Notably, and as mentioned previously, Section 824(a) of the CSA uses the term ''may'' when prefacing the five grounds, including the ground in question, upon which ''a registration . . . *may* be suspended or revoked.'' 21 U.S.C. 824(a) (emphasis added). ''Interpretation of a statute must begin with the statute's language.'' *Mallard* v. *U.S. Dist. Court,* 490 U.S. 296, 300–301 (1989) (citing *e.g., United States* v. *Ron Pair Enterprises, Inc.,* 489 U.S. 235, 241 (1989); *Landreth Timber Co.* v. *Landreth,* 471 U.S. 681, 685 (1985)). Further, the ''cardinal principle of statutory construction [is] that courts must give effect, if possible, to every clause and word of a statute.'' *Williams* v. *Taylor,* 533 U.S. 167, 174; *see also Duncan* v. *Walker,* 533 U.S. 167, 173 (2001). In general, ''the word 'may,' when used in a statute, usually implies some degree of discretion.'' *United States* v. *Rodgers,* 461 U.S. 677, 706 (1983). Although, it should be observed that that longstanding canon of statutory construction ''can be defeated by indications of legislative intent to the contrary or by obvious inferences from the structure and purpose of the statute.'' *Id.* (citing *Mason* v. *Fearson,* 50 U.S. 248 (1850); *see generally United States ex rel. Siegel* v. *Thoman,* 156 U.S. 353, 359–360 (1895)). Unlike the Agency's interpretation of Section 824(a)(3), here the Government has not offered any other statutory indication or legislative intent that the term ''may'' should be read differently under the provision in question.

Furthermore, in passing the Medicare Protection Act, Congress clearly demonstrated that it knew how to differentiate between mandatory and permissive exclusions, because it did so unequivocally in the context of federal health care programs. In lieu of using the same clear language for the provision regarding controlled substance registrations, Congress chose to place this ground for revocation or suspension under the ''may'' provisions in Section 824. *See Duncan* v. *Walker,* 533 U.S. 167, 173 (2001) (holding that ''it is well settled that '' '[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the

disparate inclusion or exclusion.' '" " (quoting *Russello* v. *United States,* 464 U.S. 16, 23 (1983)); *see also Bates* v. *United States,* 522 U.S. 23, 29–30 (1997).

Additionally, there is no further indication from legislative history that Congress intended to require automatic revocation or suspension in the context of the CSA on the grounds of exclusion. Congress amended Section 304 of the CSA to ''add exclusion from Medicare or a State health care program as a basis for denial, revocation, or suspension of registration to manufacture, distribute or dispense a controlled substance.'' S. Rep. No. 100–109, at 22 (1987), *as reprinted in* 1987 U.S.C.C.A.N. 682, 702; *see also* H.R. Rep. No. 100–85, pt. 1, at 21 (1987). Although the phrase ''as a basis for'' could be read to be mandatory or permissive, there is no clear indication of a mandate, and throughout the Senate Report, lengthy explanation was provided to justify the reasoning behind each of the mandatory provisions of the Medicare Protection Act. *See* S. Rep. at 23–26. Furthermore, given the lack of conflicting statutory language and the statute's ''straightforward statutory command, there is no reason to resort to legislative history.'' *United States* v. *Gonzales,* 520 U.S. 1 (1997).

The Government has offered no evidence to demonstrate that Congress intended to remove the discretion of the Attorney General in revoking a registration in the context of the CSA, nor has the Government proven that an interpretation other than the plain meaning of this provision of the CSA is reasonable. In light of the lack of support for the proffered interpretation of the controlling provision of the CSA, I must review the evidence provided by Respondent to determine whether revocation or suspension is appropriate given the particular facts. *See* 5 U.S.C. 556(d) (''A party is entitled to present his case or defense by oral or documentary evidence.''); 21 CFR 1301.43(c) (permitting a Respondent to file ''a waiver of an opportunity for a hearing . . . together with a written statement regarding such person's position on the matters of fact and law involved in such hearing.''); *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 829 (11th Cir. 2018) (''[W]e may set aside a decision as 'arbitrary and capricious when, among other flaws, the agency has . . . entirely failed to consider an important aspect of the problem.' ''); *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 177 (D.C. Cir. 2005) (''To uphold DEA's decision, . . . we must satisfy ourselves 'that the agency ''examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'' ' ''); *Kirk* v. *Mullen,* 749 F.2d 297, 299 (6th Cir. 1984) (Respondent ''was given an opportunity to present his case before his registration was revoked. This satisfied due process.'').

2. Agency Caselaw Revoking or Suspending a Registration on the Ground of Mandatory Exclusion Consistently Provides Respondent an Opportunity To Present Mitigating Evidence and Does Not Require a Nexus to Controlled Substances as a Prerequisite to Sanction

In reviewing the Agency decisions on Section 824(a)(5), several of the existing cases involve additional grounds under 824(a), do not rely heavily on the (a)(5) exclusion, and thus do not always offer useful guidance in how the Agency has evaluated this ground in the past. *See, e.g., John P. Moore, III, M.D.,* 82 FR 10398 (2017) (revocation based on (a)(2) controlled substances felony, (a)(3) loss of state authority and (a)(5) mandatory exclusion not related to controlled substances). I agree with the Government that ''each subsection [of Section 824(a)] provides 'an independent and adequate ground to impose a sanction on a registrant.' '' RFAA, at 4 (citing *Arnold E. Feldman, M.D.,* 82 FR 39614, 39617 (2017)); *see also Gilbert L. Franklin, D.D.S.,* 57 FR 3,441 (1992) (''[M]andatory exclusion from participation in the Medicare program constitutes an independent ground for revocation pursuant to 21 U.S.C. [§] 824(a)(5).'').

Additionally, in many of the previous Section 824(a)(5) cases, the registrant offered no mitigating evidence upon which the Administrator could analyze the facts. *See, e.g., Sassan Bassiri, D.D.S.,* 82 FR 32200, 32201 (2017). In particular, the Government highlights *Richard Hauser, M.D.,* 83 FR 26308 (2018), where revocation was sought under Section 824(a)(5) of the CSA and the registrant ''did not respond.'' RFAA, at 6 (citing to *Hauser,* at 26310). Therefore, the registrant's certificate of registration was revoked '' 'based on the unchallenged basis for his mandatory exclusion.' '' *Id.* (quoting *Hauser* at 26310). When the basis for revocation or suspension is clear and the registrant has had notice and the opportunity to present evidence, whether in a hearing or a written statement in accordance with 21 CFR 1301.43, but has chosen not to present any such evidence that could inform the Administrator's decision, it is reasonable that the Administrator might revoke or suspend. *See KK Pharmacy,* 64 FR 49507, 49510 (1999); *Orlando Ortega-Ortiz, M.D.* 70 FR 15122 (2005); *Lazaro Guerra,* 68 FR 15266 (2003) (basis for revocation was both (a)(3) and (a)(5)).

In contrast, as I have explained above, when a respondent *does* present evidence either in a written statement or in the context of a hearing, then I must review the relevant data and adequately articulate the rationale for my decision. *See Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 177 (D.C. Cir. 2005). With respect to the ground for revocation or suspension in Section 824(a)(5), Congress has given little indication of how the Agency should weigh mitigating evidence in revocations or suspensions, and to what extent the underlying crime that forms the basis for the mandatory exclusion should have a nexus to controlled substances. *See generally* S. Rep. 100–109, at 22 (1987).

This Agency has concluded repeatedly that the underlying crime requiring exclusion from federal health care programs under Section 1320a–7(a) of Title 42 does *not* require a nexus to controlled substances in order to be used as a ground for revocation or suspension of a registration. *See Narciso Reyes, M.D.,* 83 FR 61678, 61681 (2018); *KK Pharmacy,* 64 FR at 49510 (collecting cases); *Melvin N. Seglin, M.D.,* 63 Red. Reg. 70431, 70433 (1998); *Stanley Dubin, D.D.S.,* 61 FR 60727, 60728 (1996). I believe that this conclusion is well founded in the CSA for several reasons. First, only one of the four mandatory exclusion categories is related to controlled substances. 42 U.S.C. 1320a–7(a)(4) (''Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.''). However, Congress specifically cited to the entirety of 1320a–7(a) of Title 42 in 21 U.S.C. 824(a)(5), rather than only including Section 1320a–7(a)(4). The legislative history further supports the notion that Congress intended to add exclusion from federal health care programs as a basis for revocation or suspension under the CSA, not just the particular section related to controlled substances. *See* S. Rep. 100–109, at 22 (1987). Moreover, to require such crimes to be related to controlled substances would be largely duplicative of Section 824(a)(2), which provides as a basis for revocation or suspension, a registrant's conviction ''of a felony under this subchapter or subchapter II of this chapter or any other law of the United

States, or of any State, relating to any substance defined in this subchapter as a controlled substance or a list I chemical.'' 21 U.S.C. 824(a)(2). To limit the application of Section 824(a)(5) to crimes involving controlled substances would be an impermissible statutory construction, because it would render Congress's amendment superfluous. *See Dept. of Def., Army Air Force Exchange Serv.* v. *Fed. Labor Relations Auth.,* 659 F.2d 1140, 1160 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 945 (1982) (A statute should be read in a ''manner which effectuates rather than frustrates the major purpose of the legislative draftsmen.'').

The Government raises concerns that the *Reyes* decision creates confusion about whether the Government is required to demonstrate a controlled substance nexus in order to revoke or suspend a registration under Section 824(a)(5). *See* RFAA, at 8. *Reyes* is factually distinct from the present case, because the respondent in *Reyes* provided no substantive mitigating evidence. *Reyes,* 83 FR at 61680. As discussed herein, I believe that in such cases, where the ground for exclusion has been proven, and there is nothing for me to weigh, revocation or suspension is appropriate. *See, e.g., KK Pharmacy,* 64 FR at 49510. Despite the lack of substantive mitigating evidence in *Reyes,* my predecessor took the opportunity to agree with and quote the ALJ stating, '' 'this type of fraudulent behavior does not inspire confidence that . . . [Respondent] can be trusted with a prescription pad bearing a DEA registration number.' '' *Reyes,* 83 FR at 61,681. The decision goes on to state, ''After all, if Respondent signed blank certificates of medical necessity for durable medical equipment that was not medically necessary, 'it is doubtful that DEA can expect . . . [Respondent] to honestly prescribe controlled substances for only legitimate medical purposes.' '' *Id.* Where the underlying crimes have a nexus to the practice of medicine, and in particular, as in *Reyes,* where the crime demonstrates activity that is similar to activity that is frequently used to divert controlled substances, such activity logically should explicitly be factored into my determination of whether the practitioner can be entrusted with a DEA registration. As demonstrated in *Reyes,* there does not need to be a nexus to controlled substances to make a connection between the activity that caused the mandatory exclusion and the potential for abuse of a DEA registration. In Respondent's case, the crimes related to tax fraud clearly have no nexus to controlled substances, but as explained below, in particular, the crime related to obstructing justice could be relevant to Respondent's compliance with the CSA and its implementing regulations.

Sanction

Here, there is no dispute in the record that Respondent is mandatorily excluded pursuant to Section 1320a–7(a) of Title 42 and, therefore, that a ground for the revocation or suspension of Respondent's registration exists. RFAA, at 4; Respondent Statement, at 1. Additionally, I have explained that there is no requirement for the mandatory exclusion to have a nexus to controlled substances in order to revoke or suspend a registration under Section 824(a)(5) of the CSA.

The CSA authorizes the Attorney General to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.'' 21 U.S.C. 871(b). This authority specifically relates ''to 'registration' and 'control,' and 'for the efficient execution of his functions' under the statute.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 259 (2006). A clear purpose of this authority is to ''bar[ ] doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking.'' *Id.* at 270. In efficiently executing the revocation and suspension authority delegated to me under the CSA for the aforementioned purposes, I review the evidence and argument Respondent submitted to determine whether or not he has presented ''sufficient mitigating evidence to assure the Administrator that [he] can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21931, 21932 (1988)). '' 'Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.' '' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR at 23853; *John H. Kennedy, M.D.,* 71 FR 35705, 35709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62884, 62887 (1995).[4] The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

In evaluating the degree required of a Respondent's acceptance of responsibility to entrust him with a registration, in *Mohammed Asgar, M.D.,* 83 FR 29569, 29572 (2018), the Agency looked for ''unequivocal acceptance of responsibility when a respondent has committed knowing or intentional misconduct.'' *Id.* (citing *Lon F. Alexander, M.D.,* 82 FR 49704, 49728). In this case, I believe the charge to which Respondent pled guilty of ''Corruptly Endeavoring to Obstruct and Impede the Due Administration of the Internal Revenue Laws,'' where Respondent falsified documents in order to conceal his tax fraud from IRS officials, sufficiently demonstrates knowing and intentional misconduct to require clear acceptance of responsibility. *See* RFAA, at 3 and Ex 4.

Respondent indisputably states, ''I accept and acknowledge complete personal responsibility for the actions that I have pled guilty to and remain sincerely remorseful for my actions.'' Respondent Statement, at 3. There was no DEA hearing in which to judge Respondent's credibility in making this statement, or the other evidence he offered on his own behalf, thus under the CSA regulations, I must ''consider . . . [the statement] in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.'' 21 CFR 1301.43(c). Respondent did attach to his statement the results of his testimony in front of the BPMC Hearing Committee, and during which the Committee noted in restoring his license that it ''appreciated [his] sincere sense of remorse and repentance for his actions. [Respondent] accepted full responsibility for his conduct and the Committee felt that he has learned from his mistakes.'' Respondent Statement Ex. 2, at 3. Respondent's direct statement and the Hearing Committee's finding weigh heavily in favor of Respondent's acceptance of

[4] In future 824(a)(5) cases, I hope to additionally have the benefit of the Government's analysis of Respondent's mitigating evidence.

responsibility, and the Government offers no contradictory evidence.

However, Respondent also asserts that his crimes ''pertained solely to [his] personal income tax statements'' and ''[t]here were never any allegations of impropriety with respect to [his] medical practice or the furnishing of or billing for medical care services or supplies.'' Respondent Statement, at 2. Contrary to this assertion, in his HHS exclusion proceeding, the HHS ALJ particularly found that Respondent's crime was committed in connection with the delivery of a health care item or service because:

> Petitioner abused his position by appropriating the personal information of four veterans (including two individuals to whom he had provided health care services) to further his tax evasion scheme. [Respondent] would not have been in a position to misuse the veterans' personal information had he not been part of the chain of delivery of V.A. health care benefits.

HHS Appeals Board, at 5. Although the HHS ALJ was reviewing the connection between Respondent's criminal misconduct and ''health services'' under HHS legal precedent, and therefore the HHS ALJ's finding is contextually distinct from Respondent's statement, I believe that Respondent goes too far in claiming that there was no impropriety related to his medical practice. *See* Respondent Statement, at 2. Respondent had reason to know that this statement was inaccurate, because the HHS ALJ had explicitly rejected his argument. HHS Appeals Board, at 5.

Had there been a hearing on the OSC, it is possible that the HHS ALJ's finding would have come to light on cross-examination and that Respondent could have clarified his statement that his crimes were not related to impropriety related to his medical practice in the sense that they were not related to patient care, but without a hearing and a DEA ALJ's assessment of credibility in this case, I must weigh this statement against Respondent's overall credibility in accepting responsibility. There were no allegations with respect to Respondent's care of his patients, which was clearly one of the reasons that New York reinstated his state license to practice, but I cannot find that his crimes were unrelated to his medical practice. *See* Respondent Statement Ex. 3, at 2. With such limited information from Respondent, this statement appears to be aimed at minimizing the egregiousness of his conduct, which the Agency has previously weighed against a finding of acceptance of full responsibility. *See Ronald Lynch, M.D.,* 75 FR 78745, 78754 (2010) (Respondent did not accept responsibility noting that he ''repeatedly attempted to minimize his [egregious] misconduct''; *see also Michael White, M.D.,* 79 FR 62957, 62967 (2014) (finding that Respondent's ''acceptance of responsibility was tenuous at best'' and that he ''minimized the severity of his misconduct by suggesting that he thinks the requirements for prescribing Phentermine are too strict.''). In light of Respondent's minimization of his crimes' connection to his medical practice, and the lack of a hearing to determine whether his remorse is credible, Respondent's acceptance of responsibility cannot be characterized as unequivocal. As this situation highlights, the degree of acceptance of responsibility that is required does not hinge on the respondent uttering ''magic words'' of repentance, but rather on whether the respondent has credibly and candidly demonstrated that he will not repeat the same behavior and endanger the public in a manner that instills confidence in the Administrator.

The Agency also looks to the nature of the crime in determining the likelihood of recidivism and the need for deterrence. In this case, Respondent's actions can be characterized as egregious. He clearly acted out of greed in defrauding the government of taxes and he further misused the trust of his positions in stealing the identities of veterans in order to hide his criminal activity. *See Nelson Ramirez-Gonzales, M.D.,* 58 FR 52787, 52788 (1993) (''fraud perpetrated by the respondent casts doubt upon his integrity, and as such supports an action against his registration''); *George D. Osafo, M.D.* 58 FR 37508, 37509 (1993) (''Respondent's submission of fraudulent medical claims and subsequent convictions of larceny indicated that Respondent placed monetary gain above the welfare of his patients, and in so doing, endangered the public health and safety.''). In addition, Respondent callously endangered the livelihood of his unwitting accountant in the cover-up by submitting the fraudulent invoices to the accountant to then provide to the IRS. RFAA Ex. 3, at 7.

In sanction determinations, the Agency has historically considered its interest in deterring similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Joseph Gaudio, M.D.,* 74 FR 10083, 10095 (2009); *Singh,* 81 FR at 8248. Where the respondent has committed a crime with no nexus to controlled substances, and that is only partially related to his medical practice, it is much more difficult to demonstrate that sanction will be useful to generally deter the community of registrants. The underlying crimes in this case relate to tax fraud, and although I believe that deterring the registrant community from committing tax fraud is certainly in the best interest of the United States, it is not arguably within the purview of the CSA. In the context of general deterrence as it relates to the CSA, what is concerning is Respondent's misappropriation of his patients' identities to cover up his criminal activity. RFAA Ex. 3, at 7. If practitioners used their patients' identities to hide their illicit activities in violation of the CSA, such activity would be very challenging to detect.

Respondent has asserted that he has served his sentence of 18 months, paid his restitution in full, and that ''the goals of justice, deterrence and punishment have already been fully realized.'' Respondent Statement, at 2. *See Asgar,* 83 FR at 29573 (suspending registration until ''Respondent[ ] provid[es] evidence that he has satisfied the judgment of the District Court''); *but see Singh,* 81 FR at 8248–49 (denying Respondent's application even though underlying crime was 15 years prior and debt to society had been paid because it was overwhelmingly clear that Respondent did not believe he was mistaken in any way). Here, it is undisputed that Respondent complied with the criminal judgment, but it remains unclear whether he can be entrusted with a CSA registration and whether sanction is appropriate to protect the public from a recurrence of his fraudulent actions. *See Leo R. Miller, M.D.,* 53 FR 21931, 21932 (1988) (describing revocation as a remedial measure ''based upon the public interest and the necessity to protect the public from individuals who have misused controlled substances or their DEA Certificate of Registration and who have not presented sufficient mitigating evidence to assure the Administrator that they can be trusted with the responsibility carried by such a registration.'').

Despite the fact that Respondent did not violate the CSA in committing the underlying crimes, I believe that Respondent's particular criminal activity and egregious behavior in impeding the IRS investigation into his tax fraud is relevant to his particular future compliance with the CSA and its implementing regulations. Stealing the identities of patients to create fraudulent receipts is a clear indication that Respondent lacks respect for the investigatory process and will take extreme measures to hide his illegal activity. RFAA Ex. 3, at 6. As the HHS ALJ summarized, Respondent ''used

patient information, to which he had access based on his position of trust as a V.A. physician, to create fraudulent invoices in an attempt to cover up his income tax evasion. . . . These factors underscore the seriousness of his dishonest scheme.'' *Jeffrey S. Stein, M.D.,* HHS Appeals Board, at 6. It is this activity, which demonstrates a lack of integrity, coupled with Respondent's statement attempting to minimize the connection of his crimes to his medical practice that give me the most pause in determining the nature or appropriateness of a sanction in this case. *See Dubin,* 61 FR at 60728 (revoking based on respondent's ''continual use of the Medical Assistance claims, the names and provider numbers of his employee dentists without their permission'' and finding that '' 'these actions cast substantial doubt on Respondent's integrity.' '').

Respondent must convince the Administrator that his acceptance of responsibility and remorse are sufficiently credible to demonstrate that the misconduct will not recur. In some circumstances, the Agency has found that repentance and honesty weigh in favor of continuing to entrust the respondent with a registration. *See, e.g., Melvin N. Seglin, M.D.,* 63 FR 70431, 70433 (1998) (The ALJ was '' 'persuaded that Respondent has accepted responsibility for his misconduct and that is not likely to recur.' The Deputy Administrator agree[d] with [the ALJ], finding it significant that Respondent did not attempt to conceal his misconduct and in fact was quite straightforward with the investigator.''). Here, Respondent pled guilty and stated remorse and seemingly accepted responsibility, but the crime itself demonstrates a complex scheme in which he misused patients' personal information to conceal his original crime of tax fraud. *See* RFAA Ex. 3, at 7.

If Respondent were to repeat such dishonest interference in the context of a DEA investigation, it could impact the Agency's mission in preventing the diversion and misuse of controlled substances. DEA budgets for approximately 1,625 Diversion positions involved in regulating more than 1.8 million registrants overall.[5] Ensuring that a registrant is honest and does not avoid detection through fraudulent documentation is crucial to the Agency's ability to complete its mission of preventing diversion within such a large regulated population.

''While mandatory exclusion can provide an independent basis for revocation, DEA has often reserved that sanction to cases where 'there were serious questions as to the integrity of the registrant.'' *Kwan Bo Jin, M.D.,* 77 FR 35021, 35026 (2012) (quoting *Anibal P. Herrera, M.D.,* 61 FR 65075, 65078 (1996) (permitting the continuation of registration with restriction where respondent fully accepts responsibility and has paid restitution)). I will refrain from revocation in this case because of the conflicting information in the record with regard to Respondent's integrity and because I appreciate the forthright nature of his statements regarding acceptance of responsibility. However, in light of his diminishment of the full extent of his crimes, and without having the benefit of a hearing to weigh the credibility of such statements, I believe that the record presents a legitimate concern that Respondent might impede a DEA investigation in the same manner as he obstructed his IRS investigation. Even though he has accepted responsibility and demonstrated remorse, he also glossed over the misuse of patient information, which seems consistent with his prior behavior of concealing his crimes. I am concerned that, although Respondent may not be likely to commit tax fraud again, he may be dishonest in dealing with Diversion Investigators or DEA Special Agents in the future. I believe that some degree of sanction is appropriate to prevent Respondent from circumventing the CSA requirements to the detriment of its effective implementation in order to protect the public. Therefore, I will suspend Respondent's registration for a period of two years. The suspension is significantly less than his eight-year federal health care program exclusion, because the CSA is not bound by the same minimal suspension standards as HHS. Respondent has paid his restitution, he has completed his incarceration and is fulfilling his probation, but I must ensure that he is fully candid and cooperative and his fraudulent behavior is not likely to recur in order to entrust him with a CSA registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby suspend DEA Certificate of Registration No. FS6587868 issued to Jeffrey Stein, M.D. for a period of two years starting from the effective date of this Order. This Order is effective October 7, 2019.

Dated: August 23, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–19305 Filed 9–5–19; 8:45 am]

BILLING CODE 4410–09–P

[5] *See* DEA FY2020 Budget Request *available at https://www.justice.gov/jmd/page/file/1142431/download.*

DEPARTMENT OF JUSTICE

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision; Correction

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Notice; correction.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, submitted a 60-day notice for publishing in the **Federal Register** on August 28, 2019 soliciting comments to an information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The document contained incorrect information listed in the **DATES** section, providing a comment due date of September 27, 2019.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone (703) 305–0289.

SUPPLEMENTARY INFORMATION:

Correction: In the **Federal Register** of August 28, 2019, in FR Doc. 2019–18566, on page 45173, the **DATES** section is corrected to read as follows:

DATES: Comments are encouraged and will be accepted for 60 days until October 28, 2019.

Dated: August 30, 2019.

Melody Braswell,

Department Clearance Officer.

[FR Doc. 2019–19145 Filed 9–5–19; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On August 30, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Arkansas in the lawsuit entitled *United States, et al.* v. *Delek Logistics Operating, LLC, and SALA Gathering Systems, LLC, Case No. 1:18–cv–01040–SOH.*

The proposed Consent Decree resolves the United States' claims under Sections 301(a), 311(b) and 311(j) of the Clean Water Act, 33 U.S.C. 1311(a), 1321(b), and 1321(j), as well as the State of Arkansas' claims under Arkansas Hazardous Waste Management Act, Ark. Code Ann. §§ 8–7–201–227, the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8–4–101–409, and Arkansas Pollution Control and Ecology Commission Regulations 2.409 and 2.410. The claims arose from Defendants' operation of an oil storage and transfer station in Magnolia, Arkansas, and an oil spill that occurred at the facility on March 8, 2013. Under the proposed Consent Decree, Defendants have agreed to pay a civil penalty of $2,255,460.00 and perform injunctive relief measures to resolve the United States' and State of Arkansas' claims.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *Delek Logistics Operating, LLC, and SALA Gathering Systems, LLC, Case No. 1:18–cv–01040–SOH,* D.J. Ref. No. 90–5–1–1–11308. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $14.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–19274 Filed 9–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0018]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; IER Charge Form

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Civil Rights Division, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register**, allowing for a 60-day comment period.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until October 7, 2019.

ADDRESSES: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Alberto Ruisanchez, Deputy Special Counsel, USDOJ–CRT–OSC, 950 Pennsylvania Avenue NW–4CON, Washington, DC 20530. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

Written comments and/or suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405A, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: The information collection is listed below:

(1) *Type of information collection:* Extension of Currently Approved Collection.

(2) *The title of the form/collection:* Title of the Form/Collection: IER Charge Form.

(3) *Agency form number:* Form IER–1.

(3) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: The Immigrant and Employee Rights Section (IER) enforces the anti-discrimination provision (§ 274B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b. The statute prohibits: (1) Citizenship or immigration status discrimination in hiring, firing, or recruitment or referral for a fee, (2) national origin discrimination in hiring, firing, or recruitment or referral for a fee, (3) unfair documentary practices during the employment eligibility verification process (Form I–9 and E-Verify), and (4) retaliation or intimidation for asserting rights covered by the statute. IER, within the Department's Civil Rights Division, investigates and, where reasonable cause is found, litigates charges alleging discrimination. IER also initiates independent investigations, at times based on information developed during individual charge investigations. Independent investigations normally involve alleged discriminatory policies that potentially affect many employees or applicants. These investigations may result in complaints alleging a pattern or practice of discriminatory activity. If the Department lacks jurisdiction over a particular charge but believes another agency has jurisdiction over the claim, IER forwards the charge to the applicable Federal, state or local agency for any action deemed appropriate.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: It is estimated that 340 individuals will complete each form annually; each response will be completed in approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 170 total annual burden hours associated with this collection.

Dated: August 29, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–19086 Filed 9–5–19; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; TAA State Survey

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, ''TAA State Survey,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 7, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201907-1205-014* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the TAA State Survey information collection. The Office of Trade Adjustment Assistance (OTAA) is seeking to establish the TAA State Survey to collect discrete data on how State Workforce Agencies (SWAs) organize the TAA program across eight (8) distinct categories. This data will allow OTAA to analyze which practices are best supporting TAA participants, identify areas where more technical assistance is needed, and determine opportunities for greater program integration. Section 239(c) of Title II, Chapter 2 of the Trade Act of 1974, as amended authorizes this information collection. *See* 19 U.S.C. 2271.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB, under the PRA, approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on April 5, 2019 (84 FR 13722).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201907–1205–014. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Agency: DOL–ETA.

Title of Collection: TAA State Survey.

OMB ICR Reference Number: 201907–1205–014.

Affected Public: State Workforce Agencies.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 52.

Total Estimated Annual Time Burden: 260 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 30, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–19247 Filed 9–5–19; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation's Board of Directors and Finance Committee will meet telephonically on Tuesday, September 10, 2019. The meeting will commence at 4:00 p.m., EDT, and will continue until the conclusion of the agenda.

PLACE: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW, Washington, DC 20007.

Public Observation: None.

Call-In Directions For Open Sessions:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 4226175074
- When connected to the call, please immediately ''MUTE'' your telephone.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Board of Directors and Finance Committee

Closed Session

1. Approve agenda
2. Management briefing on collective bargaining agreement (CBA)
3. Consider and act on motion to approve Leaders Council and Emerging Leaders Council invitees
4. Consider and act on other business
5. Consider and act on motion to adjourn

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

September 3, 2019.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2019–19329 Filed 9–4–19; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of two teleconference meetings for the transaction of National Science Board business, as follows:

TIME AND DATE: Tuesday, September 10, 2019 at 2:00 p.m.–2:30 p.m. EDT; and Tuesday, September 10, 2019 at 2:30–3:30 p.m. EDT.

PLACE: These meetings will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED:

For the 2:00 p.m. meeting: Chair's opening remarks; presentation on the revision plan for the U.S. and International R & D report for *Science and Engineering Indicators 2020,* developed in response to reviews from NSB members, federal agency stakeholders and content experts. SEP will discuss and provide feedback to the report authors on the revision plan.

For the 2:30 meeting: Chair's opening remarks; presentation on the revision plan for The State of U.S. Science & Engineering (the new ''summary report'') for *Science and Engineering Indicators 2020,* developed in response to reviews from NSB members, federal agency stakeholders and content experts. SEP will discuss and provide feedback to the report authors on the revision plan.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Reba Bandyopadhyay (*rbandyop@nsf.gov*), 703/292–7000.

Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Christopher Blair,

Executive Assistant, National Science Board Office.

[FR Doc. 2019–19418 Filed 9–4–19; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0081]

Information Collection: NRC Form 277, Request for Visit

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 277, Request for Visit.''

DATES: Submit comments by October 7, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0050). Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0081 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–2019–0081. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0081 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19126A197. The supporting statement and title of documents are available in ADAMS under Accession No. ML19205A109.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

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

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

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled NRC Form 277, ''Request for Visit.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 16, 2019 (84 FR 22171).

1. *The title of the information collection:* NRC Form 277, Request for Visit.
2. *OMB approval number:* 3150–0051.
3. *Type of submission:* Extension.
4. *The form number if applicable:* NRC Form 277.
5. *How often the collection is required or requested:* As needed.
6. *Who will be required or asked to respond:* Licensees and NRC contractors.
7. *The estimated number of annual responses:* 60.
8. *The estimated number of annual respondents:* 60.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 10 hours.
10. *Abstract:* NRC Form 277 is completed by NRC contractors and licensees who have been granted an NRC access authorization and require verification of that access authorization and need-to-know due to (1) a visit to NRC, (2) a visit to other contractors/licensees or government agencies in which access to classified information will be involved, or (3) unescorted area access is desired.

Dated at Rockville, Maryland, this 3rd day of September, 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–19251 Filed 9–5–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0269]

Revision of Information Collection: Combined Federal Campaign Applications

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget (OMB) a request for clearance to revise an information collection. Combined Federal Campaign Applications, OMB Control No. 3206–0269, which include OPM Forms 1647–A, –B, and –E, are used to review the eligibility of national, international, and local charitable organizations and Department of Defense morale, welfare, and recreation (MWR)/Family Support and Youth Activities/Programs (FSYA/FSYP) organizations that wish to participate in the Combined Federal Campaign. The proposed revisions reflect changes in eligibility guidance from the Office of Personnel Management. On March 12, 2019, we published a 60-day notice and request for comments. We received two comments: One recommending changes to questions regarding volunteerism (which would require additional burden on CFC-participating charities); and one requesting changes which have already been implemented or which go beyond the authority of OPM. There are, therefore, no recommended revisions to this ICR.

We estimate 10,000 responses to this information collection annually. Each form takes approximately two hours to complete. The annual estimated burden is 20,000 hours.

DATES: Comments are encouraged and will be accepted until October 7, 2019. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The Combined Federal Campaign (CFC) is the world's largest and most successful annual workplace philanthropic giving campaign, with 36 CFC Zones throughout the country and overseas raising millions of dollars each

year. The mission of the CFC is to promote and support philanthropy through a program that is employee focused, cost-efficient, and effective in providing all federal employees the opportunity to improve the quality of life for all.

The CFC charity applications collect information from about 10,000 national, international, and local charities for inclusion on the CFC charity list. There are no recommended revisions to this ICR.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2019–19242 Filed 9–5–19; 8:45 am]

BILLING CODE 6325–46–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice* September 6, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 3, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 547 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–189, CP2019–212.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–19287 Filed 9–5–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 204A–1, SEC File No. 270–536, OMB Control No. 3235–0596

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 204A–1 (17 CFR 275.204A–1) under the Investment Advisers Act of 1940.'' (15 U.S.C. 80b–1 *et seq.*) Rule 204A–1 (the ''Code of Ethics Rule'') requires investment advisers registered with the SEC to (i) set forth standards of conduct expected of advisory personnel (including compliance with the federal securities laws); (ii) safeguard material nonpublic information about client transactions; and (iii) require the adviser's ''access persons'' to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The Code of Ethics Rule requires access persons to obtain the adviser's approval before investing in an initial public offering (''IPO'') or private placement. The Code of Ethics Rule also requires prompt reporting, to the adviser's chief compliance officer or another person designated in the code of ethics, of any violations of the code. Finally, the Code of Ethics Rule requires the adviser to provide each supervised person with a copy of the code of ethics and any amendments, and require the supervised persons to acknowledge, in writing, their receipt of these copies. The purposes of the information collection requirements are to (i) ensure that advisers maintain codes of ethics applicable to their supervised persons; (ii) provide advisers with information about the personal securities transactions of their access persons for purposes of monitoring such transactions; (iii) provide advisory clients with information with which to evaluate advisers' codes of ethics; and (iv) assist the Commission's examination staff in assessing the adequacy of advisers' codes of ethics and assessing personal trading activity by advisers' supervised persons.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that compliance with rule 204A–1 imposes a burden of approximately 91 hours per adviser annually based on an average adviser having 63 access persons. Our latest data indicate that there were 13,173 advisers registered with the Commission. Based on this figure, the Commission estimates a total annual burden of 1,194,133 hours for this collection of information.

Rule 204A–1 does not require recordkeeping or record retention. The collection of information requirements under the rule is mandatory. The information collected pursuant to the rule is not filed with the Commission, but rather takes the form of communications between advisers and their supervised persons. Investment advisers use the information collected to control and assess the personal trading activities of their supervised persons. Responses to the reporting requirements will be kept confidential to the extent each investment adviser provides confidentiality under its particular practices and procedures. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 3, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19239 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86832; File No. SR–NYSEArca–2019–49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the Options Regulatory Fee

August 30, 2019.

I. Introduction

On July 2, 2019, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–NYSEArca–2019–49) to modify the amount of its Options Regulatory Fee (''ORF'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on July 22, 2019.[5] The Commission received one comment letter on the proposal.[6] Pursuant to Section 19(b)(3)(C) of the Act,[7] the Commission is hereby: (1) Temporarily suspending File No. SR–NYSEArca–2019–49; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–NYSEArca–2019–49.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the amount of its ORF from $0.0055 to $0.0054 per contract.[8] The Exchange assesses the ORF on Options Trading Permit (''OTP'') Holders or OTP Firms for all options transactions that are cleared by those firms through the Options Clearing Corporation (''OCC'') in the Customer range, regardless of the exchange on which the transaction occurs.[9] The Exchange noted that its ORF ''is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of OTP Holders and OTP Firms.'' [10] Noting that it adjusts the ORF amount periodically to ensure that the revenue from ORF does not exceed its regulatory costs, the Exchange proposed to decrease the ORF because ''from 2017 to 2018, options transaction volume increased to a level that if the ORF is not adjusted, the ORF revenue to the Exchange year-over-year could exceed a material portion of the Exchange's regulatory costs.'' [11]

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[14] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements'' [15]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [16] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [17] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[18] In justifying its proposal, the Exchange stated in its filing that its proposal ''is reasonable because it would help ensure that revenue collected from the ORF does not exceed a material portion of the Exchange's regulatory costs.'' [19] In determining the amount of the proposed ORF, the Exchange said that it considered: (1) The increase in options transaction volume in 2018, (2) the decrease in options transaction volumes in the first five months of 2019, (3) the Exchange's projection that options transaction volumes will remain stable at best in the future, and (4) the ''estimated projections for [the Exchange's] regulatory costs.'' [20] The Exchange also asserted that the ORF is equitably allocated and not unfairly discriminatory because the fees are imposed on clearing firms, who can then choose to pass through all, a portion, or none of the costs of the ORF to their customers.[21] In addition, the Exchange stated that the regulatory costs relating to monitoring OTP Holders or OTP Firms with respect to Customer trading activity are generally higher than the regulatory costs associated with monitoring OTP Holders or OTP Firms that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive.[22]

As noted above, the Commission received one comment letter on the proposal, in which the commenter argued that the Exchange has not provided sufficient information to satisfy the statutory requirements under the Act.[23] Specifically, the commenter stated that the Exchange should ''include quantitative data showing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86390 (July 16, 2019), 84 FR 35169 (July 22, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii). Although the proposed rule change was effective upon filing, the Exchange indicated that it would not implement the fee until August 1, 2019. *See* Notice, *supra* note 3, at 35169.

[5] *See* Notice, *supra* note 3, at 35169.

[6] *See* Letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), dated August 27, 2019 (''SIFMA Letter'').

[7] 15 U.S.C. 78s(b)(3)(C).

[8] *See* Notice, *supra* note 3, at 35170.

[9] *See id.*

[10] *Id.*

[11] *See id.* The Exchange noted that it last changed the ORF in 2014. *See id.*

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[15] *See id.*

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(8).

[19] *See* Notice, *supra* note 3, at 35171.

[20] *See id.*

[21] *See id.* at 35171–72.

[22] *See id.* at 35171.

[23] *See* SIFMA Letter, *supra* note 6, at 1–2.

anticipated revenues, costs and profitability'' and describe the methodology used for any estimations of baseline and expected costs and revenues to support the Exchange's assertions that the proposed ORF is an equitable allocation of reasonable fees among members.[24] The commenter also stated that the Exchange should provide support for its assertions that assessing ORF only on transactions cleared at OCC in the Customer range represents an equitable allocation that is not unfairly discriminatory.[25] Lastly, the commenter argued that the Exchange should not be permitted to charge ORF for trades occurring on other exchanges unless the Exchange can support its assertion concerning its ''authority to act on activities occurring outside its own market.'' [26]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the proposal to modify the amount of the ORF is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[27]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[28]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [29] and 19(b)(2)(B) of the Act [30] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[31] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the *equitable allocation* of *reasonable* dues, fees, and other charges among its members and issuers and other persons using its facilities;'' [32] (emphasis added);
- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit *unfair discrimination* between customers, issuers, brokers, or dealers'' [33] (emphasis added); and
- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [34]

As noted above, the proposal purports to modify the amount of the ORF in response to changes in options transaction volume in a manner that is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of its options participants. However, the Exchange's statements in support of the proposed rule change are general in nature and lack detail and specificity.[35] For example, the Exchange provides only broad information on options transaction volume trends, but does not provide any information on the Exchange's historic or projected options regulatory costs (including the costs of regulating activity that clears in the Customer range and the costs of regulating activity that occurs away from the Exchange), the amount of regulatory revenue it has generated and expects to generate from the ORF as well as other sources, or the ''material portion'' of options regulatory expenses that it seeks to recover from the ORF. Similarly, the Exchange has not provided information to support its assertion that regulating customer activity is ''generally more labor-intensive'' and therefore, more costly.[36]

As the commenter stated, without more information in the filing on the Exchange's regulatory revenues attributable to ORF as well as regulatory revenue from other sources, and more information on the Exchange's regulatory costs to supervise and regulate OTP Holders and OTP Firms, including, *e.g.,* Customer versus non-Customer activity and on-exchange versus off-exchange activity, the proposal lacks information that can speak to whether the proposed ORF is reasonable, equitably allocated, and not unfairly discriminatory, particularly given that the ORF is assessed only on transactions that clear in the Customer range and regardless of the exchange on which the transaction occurs, and that the ORF is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of activity across all OTP Holders and OTP Firms.[37]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [38] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an

[24] *See id.* at 2.

[25] *See id.*

[26] *See id.*

[27] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[28] For purposes of temporarily suspending the 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).

[29] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[32] 15 U.S.C. 78f(b)(4).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78f(b)(8).

[35] *See, e.g.,* SIFMA Letter, *supra* note 6, at 2 (arguing that the Exchange has ''not provided enough information . . . to satisfy the Exchange Act standards'').

[36] *See id. See also* SIFMA Letter, *supra* note 6, at 2.

[37] *See* SIFMA Letter, *supra* note 6, at 2.

[38] 17 CFR 201.700(b)(3).

affirmative Commission finding,[39] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[40]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated and not be unfairly discriminatory.[41]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 27, 2019. Rebuttal comments should be submitted by October 11, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[42]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, 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 No. SR–NYSEArca–2019–49 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 No. SR–NYSEArca–2019–49. The 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 publicly available. All submissions should refer to File No. SR–NYSEArca–2019–49 and should be submitted on or before September 27, 2019. Rebuttal comments should be submitted by October 11, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[43] that File No. SR–NYSEArca–2019–49, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19214 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[39] *See id.*

[40] *See id.*

[41] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[42] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[43] 15 U.S.C. 78s(b)(3)(C).

[44] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 17a–13, SEC File No. 270–27, OMB Control No. 3235–0035.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 17a–13 (17 CFR 240.17a–13) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–13(b) (17 CFR 240.17a–13(b)) generally requires that at least once each calendar quarter, all registered brokers-dealers physically examine and count all securities held and account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) (17 CFR 240.17a–13(c)) provides that under specified conditions, the count, examination, and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not require broker-dealers to file a report with the Commission, discrepancies between a broker-dealer's records and the securities counts may be required to be reported, for example, as a loss on Form X–17a–5 (17 CFR 248.617), which must be filed with the Commission under Exchange Act Rule 17a–5 (17 CFR 240.17a–5). Rule 17a–13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities. Rule 17a–13 also does not apply to certain broker-dealers

required to register only because they effect transactions in securities futures products.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and applicable self-regulatory organizations (''SROs'') to those firms experiencing back-office operational issues.

As of June 30, 2019, there are approximately 3,744 broker-dealers registered with the Commission. However, given the variability in their businesses, it is difficult to quantify how many hours per year each broker-dealer spends complying with Rule 17a–13. As noted, Rule 17a–13 requires a respondent to account for all securities in its possession or subject to its control or direction. Many respondents hold few, if any, securities; while others hold large quantities. Therefore, the time burden of complying with Rule 17a–13 will depend on respondent-specific factors, including a broker-dealer's size, number of customers, and proprietary trading activity. The staff estimates that the average time spent per respondent is 100 hours per year on an ongoing basis to maintain the records required under Rule 17a–13. This estimate takes into account the fact that more than half of the 3,744 respondents—according to financial reports filed with the Commission—may spend little or no time complying with the rule, given that they do not do a public securities business or do not hold inventories of securities. For these reasons, the staff estimates that the total compliance burden per year is 374,400 hours (3,744 respondents × 100 hours/respondent).

The records required to be made by Rule 17a–13 are available only to Commission examination staff, state securities authorities, and applicable SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 3, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19238 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33613]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 30, 2019.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August 2019. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Active Assets Government Trust [File No. 811–21024]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 13, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $2,940 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on July 23, 2019.

Applicant's Address: Active Assets Government Trust, c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

Alliance California Municipal Income Fund [File No. 811–10575]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 21, 2019, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $208,679 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on June 28, 2019, and amended on August 6, 2019.

Applicant's Address: 1345 Avenue of the Americas, New York, New York 10105.

Cortina Funds, Inc. [File No. 811–21580]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 22, 2019, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of approximately $57,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on May 16, 2019, and amended on July 15, 2019 and July 25, 2019.

Applicant's Address: Cortina Funds, Inc., 825 North Jefferson Street, Suite 400, Milwaukee, Wisconsin 53202.

iShares Sovereign Screened Global Bond Fund, Inc. [File No. 811–22674]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on June 28, 2019, and amended on August 20, 2019.

Applicant's Address: c/o State Street Bank and Trust Company, 1 Lincoln Street, Mail Stop SUM 0703, Boston, Massachusetts 02111.

JPMorgan Trust III [File No. 811–22915]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 24, 2019, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $6,939.68 incurred in connection with the liquidation were paid by applicant. Applicant also has retained $182,899 for the purpose of paying remaining liabilities, outstanding tax reclaims and receivables.

Filing Dates: The application was filed on May 20, 2019, and amended on July 16, 2019 and July 24, 2019.

Applicant's Address: 277 Park Avenue, New York, New York 10172.

Putnam Fund For Growth & Income [File No. 811–00781]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Putnam Equity Income Fund, and on May 15, 2017, made a final distribution to its shareholders based on net asset value. Expenses of approximately $973,351 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on April 17, 2019, and amended on July 25, 2019.

Applicant's Address: 100 Federal Street, Boston, Massachusetts 02110.

Putnam Michigan Tax Exempt Income Fund [File No. 811–04529]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Putnam Tax Exempt Income Fund, and on July 24, 2017, made a final distribution to its shareholders based on net asset value. Expenses of approximately $371,762 incurred in connection with the reorganization were paid by the applicant, the acquiring fund, and their investment adviser.

Filing Dates: The application was filed on April 17, 2019, and amended on July 25, 2019.

Applicant's Address: 100 Federal Street, Boston, Massachusetts 02110.

Putnam Tax Exempt Money Market Fund [File No. 811–05215]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 23, 2016, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of approximately $23,143 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on April 17, 2019, and amended on July 25, 2019.

Applicant's Address: 100 Federal Street, Boston, Massachusetts 02110.

Putnam Voyager Fund [File No. 811–01682]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Putnam Growth Opportunities Fund, a series of Putnam Investment Funds, and on October 24, 2016, made a final distribution to its shareholders based on net asset value. Expenses of approximately $697,527 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on April 17, 2019, and amended on July 25, 2019.

Applicant's Address: 100 Federal Street, Boston, Massachusetts 02110.

Sentinel Group Funds, Inc. [File No. 811–00214]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Touchstone Strategic Trust and Touchstone Funds Group Trust, and on October 26, 2017 and October 30, 2017, made final distributions to its shareholders based on net asset value. Expenses of $9,266,351.78 incurred in connection with the reorganization were paid by the applicant's investment adviser, the acquiring fund's investment adviser, and/or their affiliates.

Filing Dates: The application was filed on January 8, 2019, and amended on April 29, 2019, July 25, 2019 and August 28, 2019.

Applicant's Address: One National Life Drive, Montpelier, Vermont 05602.

Sentinel Variable Products Trust [File No. 811–09917]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Touchstone Variable Series Trust, and on October 30, 2017, made a final distribution to its shareholders based on net asset value. Expenses of $1,119,224.23 incurred in connection with the reorganization were paid by the applicant's investment adviser, the acquiring fund's investment adviser, and/or their affiliates.

Filing Dates: The application was filed on January 8, 2019, and amended on July 25, 2019.

Applicant's Address: One National Life Drive, Montpelier, Vermont 05602.

Wintergreen Fund, Inc. [File No. 811–21764]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 3, 2019, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $22,648 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on July 12, 2019, and amended on August 13, 2019.

Applicant's Address: 500 International Drive, Suite 275, Mount Olive, New Jersey 07828.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19211 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86834; File No. SR–LCH SA–2019–005]

Self-Regulatory Organizations; LCH SA; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to Introduction of Clearing of the New Markit iTraxx Subordinated Financials Index CDS and the Related Single Name CDS Constituents and Enhancements to Wrong Way Risk Margin

August 30, 2019.

On August 2, 2019, Banque Centrale de Compensation, which conducts

business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to (i) introduce clearing of new Markit iTraxx Subordinated Financials Index CDS and the Related Single Name CDS Constituents (together, ''Subordinated Financials''); (ii) incorporate changes to the Wrong Way Risk margin as recommended by a risk model validation; and (iii) modify the Default Fund Additional Margin (SR–LCH SA–2019–005). The proposed rule change was published for comment in the **Federal Register** on August 9, 2019.[3] To date, the Commission has not received comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is September 23, 2019.

The Commission is extending the 45-day time period for Commission action on the proposed rule change, in which LCH SA would introduce clearing of Subordinated Financials and make the other changes noted above. The Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider LCH SA's proposed rule change.

Accordingly, pursuant to Section 19(b)(2) [5] of the Act, and for the reasons discussed above, the Commission designates November 7, 2019, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–LCH SA–2019–005).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 86576 (Aug. 6, 2019), 84 FR 39386 (Aug. 9, 2019) (SR–LCH SA–2019–005).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19216 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rules 901, 902, 903(a), 904, 905, 906, 907, and 908 of Regulation SBSR, SEC File No. 270–629, OMB Control No. 3235–0718

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rules 901, 902, 903(a), 904, 905, 906, 907, and 908 of Regulation SBSR (17 CFR 242.901, 902, 903(a), 904, 905, 906, 907, and 908), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Regulation SBSR consists of ten rules, Rules 900 to 909 under the Exchange Act. Regulation SBSR provides generally for the reporting of security-based swap information to a registered security-based swap data repository (''registered SDRs'') or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information by registered SDRs. Rule 901 specifies, with respect to each reportable event pertaining to covered transactions, who is required to report, what data must be reported, when it must be reported, where it must be reported, and how it must be reported. Rule 901(a)(1) of Regulation SBSR requires a platform to report to a registered security-based swap data repository (''registered SDR'') a security-based swap executed on such platform that will be submitted to clearing. Rule 901(a)(2)(i) of Regulation SBSR requires a registered clearing agency to report to a registered SDR any security-based swap to which it is a counterparty. Rules 902 to 909 of Regulation SBSR provide additional details as to how such reporting and public dissemination is to occur.

The Commission estimates that a total of approximately 4900 entities will be impacted by Regulation SBSR, including registered SDRs, registered security-based swap dealers, registered major securities-based swap participants, registered clearing agencies, platforms, and reporting sides and other market participants. The Commission estimates that the total reporting burden for Regulation SBSR, for all respondents, is approximately 538,257.60 hours initially (which equates to approximately 179,419.20 hours per year when annualized over three years), with a total ongoing burden thereafter of approximately 1,887,021.07 hours per year. Thus, the aggregate yearly burden is approximately 2,066,441 hours (2,066,440.27 rounded up). In addition, the Commission estimates that the total cost for all of Regulation SBSR for all respondents is approximately $21,264,300 initially (which equates to approximately $7,088,100 per year when annualized over three years), with a total ongoing cost thereafter of approximately $80,331,371 per year. Thus, the aggregate annual cost for all respondents is approximately $87,419,472 ($87,419,471.30 rounded up). A detailed break-down of the burdens applicable to each type of entity is provided in the supporting statement.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington,

DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 3, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19241 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86842; File No. SR–NASDAQ–2019–069]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Manner in Which It Calculates Volume, Liquidity and Quoting Thresholds Applicable To Billing on the Exchange in Relation to a Systems Issue Experienced by SIAC on August 12, 2019

August 30, 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 28, 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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 12, 2019 systems issue, which impacted trade and quote dissemination across all markets.[3] Specifically, on August 12, 2019, SIAC[4] determined to fail over to back up servers after receiving indications that its primary systems had become unstable, causing connectivity disruptions. The fail over to secondary systems failed to cure the problem, resulting in market-wide issues with the Consolidated Quote System and the Consolidated Tape System, including gaps in the intra-day trades, quotes, and other messages that were attempted to be sent to it. Consequently, the accuracy of the transaction and quotation data for August 12, 2019 is unknown.

As a result, the Exchange is unable to accurately calculate member transaction fees and credits, including calculations for the Exchange's incentive programs, since several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that members must satisfy in order to qualify for the particular rates (*e.g.,* percentage of Consolidated Volume, Average Daily Volume, and time at the NBBO). The Exchange therefore proposes to exclude August 12, 2019 from all tier calculations described in Equity 7, Sections 114[5] and 118[6] in order to reasonably ensure that a member that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate and/or incentive, would not be negatively impacted by the August 12, 2019 systems issue.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, in that 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, and 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. In this regard, because the accuracy of the transaction and quotation data disseminated by SIAC for August 12, 2019 is unknown, the Exchange believes that it is reasonable to exclude August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118, which would reasonably ensure that a member's qualification for various pricing programs would be based on the data that the Exchange believes is accurate. The Exchange also believes that the proposed rule change is reasonable because the SIAC systems issue that caused inaccurate transaction and quotation data was not within Nasdaq's control nor can Nasdaq correct or otherwise remediate the issue. Including August 12, 2019 transaction and quotation data for purposes of tier calculations described in Equity 7, Sections 114 and 118 could result in inaccurate determinations for member rates based on the extent to which their transactions and quotations were impacted by the August 12, 2019 event in comparison to the overall inaccuracies in the data provided by SIAC for that date. Consequently, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118. Last, excluding August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118 is in the public interest because it will provide Exchange members with the closest approximation of the fees and credits

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See https://www.ctaplan.com/alerts#110000144324.*

[4] SIAC is the operator of the Consolidated Quote System and Consolidated Tape System, which disseminate real-time trade and quote information in New York Stock Exchange LLC (Network A) and Bats, NYSE Arca, NYSE American and other regional exchange (Network B) listed securities.

[5] Equity 7, Section 114 provides the Exchange's market quality incentive programs.

[6] Equity 7, Section 118 provides the fees and credits for use of the Exchange's order execution and routing services.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

that they would have been eligible for if accurate data for August 12, 2019 were available and included in the monthly calculation.

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 change would treat all market participants on the Exchange equally by excluding August 12, 2019 from all tier calculations described in Equity 7, Sections 114 and 118. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.

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 [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [12] 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. The Exchange begins the calculation and billing of member fees and credits under Equity 7, Sections 114 and 118 at the close of each month, and an operative delay would disrupt the normal billing process, which may cause expense and potential investor confusion. Therefore, 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 proposal as operative upon filing.[13]

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–2019–069 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–2019–069. 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–2019–069 and should be submitted on or before September 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19224 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 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.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17f–1(g), SEC File No. 270–30, OMB Control No. 3235–0290

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17f–1(g) (17 CFR 240.17f–1(g)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Paragraph (g) of Rule 17f–1 requires that all reporting institutions (*i.e.,* every national securities exchange, member

thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies of all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) All agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are approximately 10,018 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (a total of 33 minutes or 0.5511 hours per respondent per year). Thus, the total estimated annual time burden for all respondents is 5,521 hours (10,018 × 0.5511 hours = 5,521). Assuming an average hourly cost for clerical work of $50.00, the average total yearly record retention internal cost of compliance for each respondent would be $27.56 ($50 × 0.5511 hours). Based on these estimates, the total annual internal compliance cost for the estimated 10,018 reporting institutions would be approximately $276,096 (10,018 × $27.56).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 3, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19240 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86837; File No. SR–PEARL–2019–25]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

August 30, 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 23, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange previously filed the proposal on June 26, 2019 (SR–PEARL–2019–21). That filing has been withdrawn and replaced with the current filing (SR–PEARL–2019–25).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for 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 is refiling its proposal to amend the Fee Schedule regarding connectivity to the Exchange in order to provide greater detail and clarity concerning the Exchange's cost allocation, as it pertains to the Exchange's expenses for network connectivity services. In order to determine the Exchange's costs associated with providing network connectivity services, the Exchange conducted an extensive cost allocation review process in which the Exchange did a line-by-line analysis of the Exchange's general expense ledger to determine which of those expenses relate to the provision of network connectivity services, and, if related, what portion (or allocation) of such expense should be attributed to the cost of providing network connectivity services. The Exchange is now presenting the results of the cost allocation review in a way that corresponds directly with income statement expense line items to provide greater transparency into its actual costs associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fee increases are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing

connectivity and will not result in excessive pricing or supracompetitive profit, when comparing the Exchange's total annual expense associated with providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''). These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[4] The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.[5] The Commission received one comment letter on the proposal.[6] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission on September 17, 2018.[7] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the First Proposed Rule Change.[8]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.[9] The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.[10] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.[11] The Commission received one comment letter on the proposal.[12] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'') issued by the Commission on October 3, 2018.[13] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.[14]

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are reasonable. On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.[15]

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.[16] The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[17] The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[18] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.[19]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 83785 (August 7, 2018), 83 FR 40101 (August 13, 2018) (SR–PEARL–2018–16) (the ''First Proposed Rule Change'').

[5] *Id.*

[6] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[7] *See* Securities Exchange Act Release No. 34–84177 (September 17, 2018).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 84397 (October 10, 2018), 83 FR 52272 (October 16, 2018) (SR–PEARL–2018–16).

[10] *See* Securities Exchange Act Release No. 84358 (October 3, 2018), 83 FR 51022 (October 10, 2018) (SR–PEARL–2018–19) (the ''Second Proposed Rule Change'').

[11] *Id.*

[12] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (''SIFMA Letter'').

[13] *See supra* note 10.

[14] *Id.*

[15] *See* Securities Exchange Act Release No. 84651 (November 26, 2018), 83 FR 61687 (November 30, 2018) (SR–PEARL–2018–19).

[16] *See* Securities Exchange Act Release No. 85317 (March 14, 2019), 84 FR 10380 (March 20, 2019) (SR–PEARL–2019–08) (the ''Third Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule).

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[19] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [20] The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

> The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[21]

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.[22]

The Exchange refiled the Proposed Fee Increases on April 30, 2019, designating the Proposed Fee Increases immediately effective.[23] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[24] The Fourth Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees (the ''Guidance'').[25]

The Commission received two comment letters on the Fourth Proposed Rule Change, after the Guidance was released.[26] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Fourth Proposed Rule Change to justify the Proposed Fee Increases based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Fourth Proposed Rule Change. Also, Healthy Markets did not comment on the Fourth Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Fourth Proposed Rule Change.[27]

The Exchange refiled the Proposed Fee Increases on June 26, 2019, designating the Proposed Fee Increases immediately effective.[28] The Fifth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[29] The Fifth Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fee Increases are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit, in light of the Guidance issued by Commission staff subsequent to the Fourth Proposed Rule Change, and primarily through the inclusion of anticipated revenue figures associated with the provision of network connectivity services.

The Commission received three comment letters on the Fifth Proposed Rule Change.[30]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX [PEARL] is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supracompetitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Fifth Proposed Rule Change.[31]

The Exchange is now refiling the Proposed Fee Increases to provide greater detail and clarity concerning the Exchange's cost allocation, as it pertains to the Exchange's expense relating to the provision of network connectivity services. The Exchange believes that the Proposed Fee Increases are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific

[20] *See* IEX Letter, pg. 1.

[21] *See* Second Healthy Markets Letter, pg. 2.

[22] *See* SR–PEARL–2019–08.

[23] *See* Securities Exchange Act Release No. 85837 (May 10, 2019), 84 FR 22214 (May 16, 2019) (SR–PEARL–2019–17) (the ''Fourth Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule).

[24] *Id.*

[25] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[26] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

[27] *See* SR–PEARL–2019–17.

[28] *See* Securities Exchange Act Release No. 86343 (July 10, 2019), 84 FR 34003 (July 16, 2019) (SR–PEARL–2019–21) (the ''Fifth Proposed Rule Change'').

[29] *Id.*

[30] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Fourth SIFMA Letter'').

[31] *See* SR–PEARL–2019–21.

information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supracompetitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection [sic].

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [32] in general, and furthers the objectives of Section 6(b)(4) of the Act [33] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [34] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [35]

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX PEARL. Further, of the number of Members that connect directly to MIAX PEARL, many such Members do not purchase market data from MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. For example, the following are not Members of MIAX PEARL: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX PEARL, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than Market Makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(4).

[34] 15 U.S.C. 78f(b)(5).

[35] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX PEARL or its affiliates, MIAX and MIAX Emerald, they do not purchase connectivity to MIAX PEARL, and they do not purchase market data from MIAX PEARL. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX PEARL, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[36] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX PEARL notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAX PEARL and its affiliates. MIAX PEARL competes with nine (9) non-Members who resell MIAX PEARL connectivity. These are resellers of MIAX PEARL connectivity—they are not arrangements between broker-dealers to share connectivity costs, as SIFMA suggests. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX PEARL (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX PEARL does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX PEARL to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX PEARL and/or MIAX. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX PEARL and/or MIAX. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX PEARL, constraining the price that MIAX PEARL is able to charge for connectivity to its Exchange.

The Exchange[37] and MIAX[38] are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX PEARL, MIAX, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX, or both. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX PEARL recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Thus, the value of the 1Gb alternative is much lower than the value of a 10Gb alternative, when measured based on the type of Exchange access it offers, which is the basis for difference in price between a 1Gb connection and a 10Gb connection. Approximately just less than half of MIAX PEARL and MIAX Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and, therefore, consume less resources from the network. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases ($9,300 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the network resources consumed by the market participants—lowest bandwidth

[36] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

[37] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members/pearl.*

[38] MIAX has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members.*

consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative.

With respect to options trading, the Exchange had only 5.08% market share of the U.S. options industry in Equity/ETF classes according to the OCC in July 2019.[39] For July of 2019, the Exchange's affiliate, MIAX, had only 3.61% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[40] For July 2019, the Exchange's affiliate, MIAX Emerald, had only 0.68% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[41] The Exchange is aware of no evidence that a combined market share of less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX PEARL must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, see the R2G Services LLC (''R2G'') letter based on BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[42] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 41 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[43] Nasdaq ISE, LLC has approximately 100 members,[44] and NYSE American LLC has over 80 members.[45] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 41 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018, particularly in light of the R2G disconnection example cited above.[46] In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX PEARL and MIAX; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.[47] Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options.

[39] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[40] *Id.*

[41] *Id.*

[42] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[43] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[44] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[45] *See https://www.nyse.com/markets/american-options/membership#directory.*

[46] See *supra note* 42.

[47] The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

MIAX PEARL did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is set too high (the R2G example),[48] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the different levels of service provided and the largest percentage increase being associated with the lowest cost connection. Further, the Exchange believes that the fees are reasonably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange's network. It is these firms that also account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 82% of the volume on the Exchange. For example, for all of July 2019, approximately 14.9 million contracts of the approximately 18.1 million contracts executed were done by the top market making firms of the Exchange's total volume.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit. The Proposed Fee Increases will allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure to support this technology since Exchange launched operations in February 2017. Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development (''R&D'') efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to expanding its Information Security services, network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since became operational in February 2017.

Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX PEARL and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX PEARL and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX PEARL and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX PEARL and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million. These costs have increased over 10% since the Exchange became operational in February 2017. As these network connectivity-related expenses increase, MIAX PEARL and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the expense increases since February 2017 include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee increased cost, this is the cost associated with MIAX PEARL consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX PEARL to effectively pay its competitors for this connectivity. While the Exchange and MIAX have incurred a total increase in connectivity expenses since January 2017 (the last time connectivity fees were raised) of approximately $1.5 million per year (as described above), the total increase in connectivity revenue amount as a result of the

[48] See *supra note* 42.

Proposed Fee Increases is projected to be approximately $1.2 million per year for MIAX PEARL and MIAX. Accordingly, the total projected MIAX PEARL and MIAX connectivity revenue as a result of the proposed increase, on an annualized basis, is less than the total annual actual MIAX PEARL and MIAX connectivity expense. Accordingly, the Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the increase in actual costs to the Exchange (since February 2017) versus the projected increase in annual revenue. The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own and operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since February 2017 and are loss leaders for the Exchange to provide these added benefits for Members and non-Members.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 audited financial statements which are publicly available as part of the Exchange's Form 1 Amendment, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitutes the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the total annual expense of MIAX PEARL and MIAX collected for providing network connectivity services versus the total projected annual revenue of both exchanges associated with providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services (that is, the shared network connectivity of MIAX PEARL and MIAX, but excluding MIAX Emerald) was approximately $19.3 million. The $19.3 million in total annual expense is comprised of the following, all of which is directly related to the provision of network connectivity services by MIAX PEARL and MIAX to their respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX PEARL and MIAX to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX PEARL and MIAX to provide the network connectivity services. All such expenses are more fully-described below, and are mapped to the MIAX PEARL and MIAX 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements'') which are filed with the Commission as part of the Form 1 Amendments of MIAX PEARL and MIAX, and are available to the public.

For 2018, total third-party expense, relating to fees paid by MIAX PEARL and MIAX to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $5,052,346. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX PEARL and MIAX trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX PEARL and MIAX office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''), which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion of the expense

relating to the provision of network connectivity services). Accordingly, MIAX PEARL and MIAX do not allocate their entire information technology and communication costs to the provision of network connectivity services.

For 2018, total internal expense, relating to the internal costs of MIAX PEARL and MIAX to provide the network connectivity services, was $14,271,870. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the provision of network connectivity for trading; and (3) occupancy costs for leased office space for staff that support the provision of network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion of the expense relating to the provision of network connectivity services). Accordingly, MIAX PEARL and MIAX do not allocate their entire costs contained in those line items to the provision of network connectivity services.

MIAX's and MIAX PEARL's combined employee compensation and benefits expense relating to providing network connectivity services was $5,264,151, which is only a portion of the $11,997,098 (for MIAX) and $8,545,540 (for MIAX PEARL) total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. MIAX's and MIAX PEARL's combined depreciation and amortization expense relating to providing network connectivity services was $8,269,048, which is only a portion of the $6,179,506 (for MIAX) and $4,783,245 (for MIAX PEARL) total expense for depreciation and amortization that is stated in the 2018 Financial Statements. MIAX's and MIAX PEARL's combined occupancy expense relating to providing network connectivity services was $738,669, which is only a portion of the $945,431 (for MIAX) and $581,783 (for MIAX PEARL) total expense for occupancy that is stated in the 2018 Financial Statements.

Accordingly, the total projected MIAX and MIAX PEARL combined revenue for providing network connectivity services, reflective of the proposed increase, on an annualized basis, of $14.5 million, is less than total annual actual MIAX PEARL and MIAX combined expense for providing network connectivity services during 2018 of approximately $19.3 million. MIAX PEARL and MIAX project comparable combined expenses for providing network connectivity services for 2019, as compared to 2018.

For the avoidance of doubt, none of the expenses included herein relating to the provision of network connectivity services relate to the provision of any other services offered by MIAX PEARL and MIAX.

Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supracompetitive profit, when comparing the actual network connectivity costs to the Exchange versus the projected network connectivity annual revenue, including the increased amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 Financial Statements, which are publicly available as part of the Exchange's Form 1 Amendment filed with the Commission on June 30, 2019.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[49] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[50] While MIAX PEARL's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX PEARL believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX PEARL believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[51]

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage. The Exchange believes that the Proposed Fee Increases do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct

[49] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[50] *Id.*

[51] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fee Increases do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fee Increases reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fee Increases do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[52] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect. While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[53] and Rule 19b–4(f)(2) [54] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2019–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2019–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2019–25 and should be submitted on or before September 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19218 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[52] *See supra* note 49.

[53] 15 U.S.C. 78s(b)(3)(A)(ii).

[54] 17 CFR 240.19b–4(f)(2).

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86836; File No. SR–MIAX–2019–38]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 30, 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 23, 2019, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The Exchange previously filed the proposal on June 26, 2019 (SR–MIAX–2019–31). That filing has been withdrawn and replaced with the current filing (SR–MIAX–2019–38).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is refiling its proposal to amend the Fee Schedule regarding connectivity to the Exchange in order to provide greater detail and clarity concerning the Exchange's cost allocation, as it pertains to the Exchange's expenses for network connectivity services. In order to determine the Exchange's costs associated with providing network connectivity services, the Exchange conducted an extensive cost allocation review process in which the Exchange did a line-by-line analysis of the Exchange's general expense ledger to determine which of those expenses relate to the provision of network connectivity services, and, if related, what portion (or allocation) of such expense should be attributed to the cost of providing network connectivity services. The Exchange is now presenting the results of the cost allocation review in a way that corresponds directly with income statement expense line items to provide greater transparency into its actual costs associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fee increases are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing connectivity and will not result in excessive pricing or supracompetitive profit, when comparing the Exchange's total annual expense associated with providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [3] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, MIAX PEARL, LLC (''MIAX PEARL''). These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[4] The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.[5] The Commission received one comment letter on the proposal.[6] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission on September 17, 2018.[7] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the First Proposed Rule Change.[8]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.[9] The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.[10] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.[11] The Commission received one comment letter on the proposal.[12] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'') issued by the Commission on October 3, 2018.[13] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.[14]

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 83786 (August 7, 2018), 83 FR 40106 (August 13, 2018) (SR–MIAX–2018–19) (the ''First Proposed Rule Change'').

[5] *Id.*

[6] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association (''Healthy Markets''), to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[7] *See* Securities Exchange Act Release No. 34–84175 (September 17, 2018), 83 FR 47955 (September 21, 2018) (SR–MIAX–2018–19) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 84398 (October 10, 2018), 83 FR 52264 (October 16, 2018) (SR–MIAX–2018–19 (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[10] *See* Securities Exchange Act Release No. 84357 (October 3, 2018), 83 FR 50976 (October 10, 2018) (SR–MIAX–2018–25) (the ''Second Proposed Rule Change'') (Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

[11] *Id.*

[12] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (''SIFMA Letter'').

[13] *See supra* note 10.

[14] *Id.*

approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are reasonable. On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.[15]

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.[16] The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[17] The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[18] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.[19]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [20] The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

> The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[21]

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.[22]

The Exchange refiled the Proposed Fee Increases on April 30, 2019, designating the Proposed Fee Increases immediately effective.[23] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[24] The Fourth Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees (the ''Guidance'').[25]

The Commission received two comment letters on the Fourth Proposed Rule Change, after the Guidance was released.[26] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Fourth Proposed Rule Change to justify the Proposed Fee Increases based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for

[15] *See* Securities Exchange Act Release No. 84650 (November 26, 2018), 83 FR 61705 (November 30, 2018) (SR–MIAX–2018–25) (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members.).

[16] *See* Securities Exchange Act Release No. 85318 (March 14, 2019), 84 FR 10363 (March 20, 2019) (SR–MIAX–2019–10) (the ''Third Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule).

[17] *Id.*

[18] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[19] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

[20] *See* IEX Letter, pg. 1.

[21] *See* Second Healthy Markets Letter, pg. 2.

[22] *See* SR–MIAX–2019–10.

[23] *See* Securities Exchange Act Release No. 85836 (May 10, 2019), 84 FR 22205 (May 16, 2019) (SR–MIAX–2019–23) (the ''Fourth Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule).

[24] *Id.*

[25] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[26] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

the Commission to suspend the Fourth Proposed Rule Change. Also, Healthy Markets did not comment on the Fourth Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Fourth Proposed Rule Change.[27]

The Exchange refiled the Proposed Fee Increases on June 26, 2019, designating the Proposed Fee Increases immediately effective.[28] The Fifth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[29] The Fifth Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fee Increases are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit, in light of the Guidance issued by Commission staff subsequent to the Fourth Proposed Rule Change, and primarily through the inclusion of anticipated revenue figures associated with the provision of network connectivity services.

The Commission received three comment letters on the Fifth Proposed Rule Change.[30]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supracompetitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Fifth Proposed Rule Change.[31]

The Exchange is now refiling the Proposed Fee Increases to provide greater detail and clarity concerning the Exchange's cost allocation, as it pertains to the Exchange's expense relating to the provision of network connectivity services. The Exchange believes that the Proposed Fee Increases are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supracompetitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX PEARL, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[32] in general, and furthers the objectives of Section 6(b)(4) of the Act[33] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[34] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system

[27] *See* SR–MIAX–2019–23.

[28] *See* Securities Exchange Act Release No. 86342 (July 10, 2019), 84 FR 34012 (July 16, 2019) (SR–MIAX–2019–31) (the ''Fifth Proposed Rule Change'').

[29] *Id.*

[30] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Fourth SIFMA Letter'').

[31] *See* SR–MIAX–2019–31.

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(4).

[34] 15 U.S.C. 78f(b)(5).

''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [35]

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. Further, of the number of Members that connect directly to MIAX, many such Members do not purchase market data from MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. For example, the following are not Members of MIAX: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX or its affiliates, MIAX PEARL and MIAX Emerald, they do not purchase connectivity to MIAX, and they do not purchase market data from MIAX. The Exchange recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[36] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAX and its affiliates. MIAX competes with nine (9) non-Members who resell MIAX connectivity. These are resellers of MIAX connectivity—they are not arrangements between broker-dealers to share connectivity costs, as SIFMA suggests. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX and/or MIAX PEARL. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX and/or MIAX PEARL. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX, constraining the price that MIAX is able to charge for connectivity to its Exchange.

[35] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[36] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

The Exchange [37] and MIAX PEARL [38] are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX, MIAX PEARL, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX PEARL, or both. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Thus, the value of the 1Gb alternative is much lower than the value of a 10Gb alternative, when measured based on the type of Exchange access it offers, which is the basis for difference in price between a 1Gb connection and a 10Gb connection. Approximately just less than half of MIAX and MIAX PEARL Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and, therefore, consume less resources from the network. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases ($9,300 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the network resources consumed by the market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative.

With respect to options trading, the Exchange had only a 3.61% market share of the U.S. options industry in July 2019 in Equity/ETF classes according to the OCC.[39] For July 2019, the Exchange's affiliate, MIAX PEARL, had only a 5.08% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[40] For July 2019, the Exchange's affiliate, MIAX Emerald, had only a 0.68% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[41] The Exchange is not aware of any evidence that a combined market share of less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, see the R2G Services LLC (''R2G'') letter based on BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[42] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 45 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[43]

[37] The Exchange has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members.*

[38] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members/pearl.*

[39] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[40] *Id.*

[41] *Id.*

[42] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[43] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

Nasdaq ISE, LLC has approximately 100 members,[44] and NYSE American LLC has over 80 members.[45] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 45 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018, particularly in light of the R2G disconnection example cited above.[46] In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX and MIAX PEARL; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.[47] Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options. MIAX did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is set too high (the R2G example),[48] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the different levels of service provided and the largest percentage increase being associated with the lowest cost connection. Further, the Exchange believes that the fees are reasonably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange's network. It is these firms that also account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 74% of the volume on the Exchange. For example, for all of July 2019, approximately 5.2 million contracts of the 7.0 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit. The Proposed Fee Increases will allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure to support this technology since it last filed to increase its connectivity fees in December 2016, which became effective on January 1, 2017.[49] Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to

[44] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[45] *See https://www.nyse.com/markets/american-options/membership#directory.*

[46] *See supra* note 42.

[47] The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

[48] *See supra* note 42.

[49] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify the Exchange's Connectivity Fees).

several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development (''R&D'') efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to expanding its Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since it last increased its connectivity fees on January 1, 2017.

Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million. These costs have increased over 10% since the last time the Exchange increased its connectivity fees on January 1, 2017. As these network connectivity-related expenses increase, MIAX and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the expense increases since January 1, 2017 include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in data center costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee increased cost, this is the cost associated with the Exchange consuming connectivity/content from the equities markets in order to operate the Exchange, causing the Exchange to effectively pay its competitors for this connectivity. While the Exchange and MIAX PEARL have incurred a total increase in connectivity expenses since January 2017 (the last time connectivity fees were raised) of approximately $1.5 million per year (as described above), the total increase in connectivity revenue amount as a result of the Proposed Fee Increases is projected to be approximately $1.2 million per year for MIAX and MIAX PEARL. Accordingly, the total projected MIAX and MIAX PEARL connectivity revenue as a result of the proposed increase, on an annualized basis, is less than the total annual actual MIAX and MIAX PEARL connectivity expense. Accordingly, the Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the increase in actual costs to the Exchange (since January 2017) versus the projected increase in annual revenue.

The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own and operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since January 1, 2017 and are loss leaders for the Exchange to provide these added benefits for Members and non-Members.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this

network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 audited financial statements which are publicly available as part of the Exchange's Form 1 Amendment, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitutes the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the total annual expense of MIAX and MIAX PEARL associated with providing network connectivity services versus the total projected annual revenue of both exchanges collected for providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services (that is, the shared network connectivity of MIAX and MIAX PEARL, but excluding MIAX Emerald) was approximately $19.3 million. The $19.3 million in total annual expense is comprised of the following, all of which is directly related to the provision of network connectivity services by MIAX and MIAX PEARL to their respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX and MIAX PEARL to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX and MIAX PEARL to provide the network connectivity services. All such expenses are more fully-described below, and are mapped to the MIAX and MIAX PEARL 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements'') which are filed with the Commission as part of the Form 1 Amendments of MIAX and MIAX PEARL, and are available to the public.

For 2018, total third-party expense, relating to fees paid by MIAX and MIAX PEARL to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $5,052,346. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX and MIAX PEARL trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX and MIAX PEARL office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''), which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion of the expense relating to the provision of network connectivity services). Accordingly, MIAX and MIAX PEARL do not allocate their entire information technology and communication costs to the provision of network connectivity services.

For 2018, total internal expense, relating to the internal costs of MIAX and MIAX PEARL to provide the network connectivity services, was $14,271,870. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the provision of network connectivity for trading; and (3) occupancy costs for leased office space for staff that support the provision of network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion of the expense relating to the provision of network connectivity services). Accordingly, MIAX and MIAX PEARL do not allocate their entire costs contained in those line items to the provision of network connectivity services.

MIAX's and MIAX PEARL's employee compensation and benefits expense relating to providing network connectivity services was $5,264,151, which is only a portion of the $11,997,098 (for MIAX) and $8,545,540 (for MIAX PEARL) total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. MIAX's and MIAX PEARL's depreciation and amortization expense relating to providing network connectivity services was $8,269,048, which is only a portion of the $6,179,506 (for MIAX) and $4,783,245 (for MIAX PEARL) total expense for depreciation and amortization that is stated in the 2018 Financial Statements. MIAX's and MIAX PEARL's combined occupancy expense relating to providing network connectivity services was $738,669, which is only a portion of the $945,431 (for MIAX) and $581,783 (for MIAX PEARL) total expense for occupancy that is stated in the 2018 Financial Statements.

Accordingly, the total projected MIAX and MIAX PEARL combined revenue for providing network connectivity services, reflective of the proposed increase, on an annualized basis, of $14.5 million, is less than total annual actual MIAX and MIAX PEARL combined expense for providing network connectivity services during 2018 of approximately $19.3 million. MIAX and MIAX PEARL project comparable combined expenses for providing network connectivity services for 2019, as compared to 2018.

For the avoidance of doubt, none of the expenses included herein relating to the provision of network connectivity services relate to the provision of any other services offered by MIAX and MIAX PEARL.

Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supracompetitive profit, when comparing the actual network connectivity costs to the Exchange versus the projected network connectivity annual revenue, including the increased amount. Additional information on overall revenue and expense of the Exchange can be found

in the Exchange's 2018 Financial Statements, which are publicly available as part of the Exchange's Form 1 Amendment filed with the Commission on June 30, 2019.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[50] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[51] While MIAX's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[52]

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

The Exchange believes that the Proposed Fee Increases do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fee Increases do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fee Increases reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fee Increases do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[53] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[54] and Rule 19b–4(f)(2)[55] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[50] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[51] *Id.*

[52] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[53] *See supra* note 50.

[54] 15 U.S.C. 78s(b)(3)(A)(ii).

[55] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2019–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2019–38 and should be submitted on or before September 27,2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19221 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86840; File No. SR–BX–2019–029]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Manner in Which It Calculates Volume, Liquidity and Quoting Thresholds Applicable to Billing on the Exchange in Relation to a Systems Issue Experienced by SIAC on August 12, 2019

August 30, 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 28, 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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 12, 2019 systems issue, which impacted trade and quote dissemination across all markets.[3] Specifically, on August 12, 2019, SIAC[4] determined to fail over to back up servers after receiving indications that its primary systems had become unstable, causing connectivity disruptions. The fail over to secondary systems failed to cure the problem, resulting in market-wide issues with the Consolidated Quote System and the Consolidated Tape System, including gaps in the intra-day trades, quotes, and other messages that were attempted to be sent to it. Consequently, the accuracy of the transaction and quotation data for August 12, 2019 is unknown.

As a result, the Exchange is unable to accurately calculate member transaction fees and credits, including calculations for the Exchange's incentive programs, since several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that members must satisfy in order to qualify for the particular rates (*e.g.,* percentage of Consolidated Volume, Average Daily Volume, and time at the NBBO). The Exchange therefore proposes to exclude August 12, 2019 from all tier calculations described in Equity 7, Section 118[5] in order to reasonably ensure that a member that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate and/or incentive, would not be negatively impacted by the August 12, 2019 systems issue.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of

[3] *See https://www.ctaplan.com/alerts#110000144324.*

[4] SIAC is the operator of the Consolidated Quote System and Consolidated Tape System, which disseminate real-time trade and quote information in New York Stock Exchange LLC (Network A) and Bats, NYSE Arca, NYSE American and other regional exchange (Network B) listed securities.

[5] Equity 7, Section 118 provides the fees and credits for use of the Exchange's order execution and routing services.

[6] 15 U.S.C. 78f(b).

the Act,[7] 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. In this regard, because the accuracy of the transaction and quotation data disseminated by SIAC for August 12, 2019 is unknown, the Exchange believes that it is reasonable to exclude August 12, 2019 from all tier calculations described in Equity 7, Section 118, which would reasonably ensure that a member's qualification for various pricing programs would be based on the data that the Exchange believes is accurate. The Exchange also believes that the proposed rule change is reasonable because the SIAC systems issue that caused inaccurate transaction and quotation data was not within Exchange's control nor can the Exchange correct or otherwise remediate the issue. Including August 12, 2019 transaction and quotation data for purposes of tier calculations described in Equity 7, Section 118 could result in inaccurate determinations for member rates based on the extent to which their transactions and quotations were impacted by the August 12, 2019 event in comparison to the overall inaccuracies in the data provided by SIAC for that date. Consequently, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 12, 2019 from all tier calculations described in Equity 7, Section 118. Last, excluding August 12, 2019 from all tier calculations described in Equity 7, Section 118 is in the public interest because it will provide Exchange members with the closest approximation of the fees and credits that they would have been eligible for if accurate data for August 12, 2019 were available and included in the monthly calculation.

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 change would treat all market participants on the Exchange equally by excluding August 12, 2019 from all tier calculations described in Equity 7, Section 118. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.

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[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] 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. The Exchange begins the calculation and billing of member fees and credits under Equity 7, Section 118 at the close of each month, and an operative delay would disrupt the normal billing process, which may cause expense and potential investor confusion. Therefore, 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 proposal as operative upon filing.[12]

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–BX–2019–029 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–2019–029. 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

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

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–2019–029 and should be submitted on or before September 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19220 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86835; File No. SR–BOX–2019–22]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network

August 30, 2019.

On June 26, 2019, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's fee schedule to establish certain connectivity fees and reclassify its high speed vendor feed connection as a port fee. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on July 15, 2019.[4] The Commission received two comment letters on the proposal.[5] On August 22, 2019, the Exchange withdrew the proposed rule change (SR–BOX–2019–22).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 86335 (July 9, 2019), 84 FR 33788.

[5] *See* Letters to Vanessa Countryman, Secretary, Commission, from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, dated August 5, 2019 and Tyler Gellasch, Executive Director, Healthy Markets Association, dated August 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19223 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86839; File No. SR–EMERALD–2019–31]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt System Connectivity Fees

August 30, 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 23, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to adopt the Exchange's system connectivity fees.

The Exchange previously filed the proposal on June 26, 2019 (SR–EMERALD–2019–24). That filing has been withdrawn and replaced with the current filing (SR–EMERALD–2019–31).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is refiling its proposal to amend the Fee Schedule regarding connectivity to the Exchange in order to provide greater detail and clarity concerning the Exchange's cost allocation, as it pertains to the Exchange's expenses for network connectivity services. In order to determine the Exchange's costs associated with providing network connectivity services, the Exchange conducted an extensive cost allocation review process in which the Exchange did a line-by-line analysis of the Exchange's general expense ledger to determine which of those expenses relate to the provision of network connectivity services, and, if related, what portion (or allocation) of such expense should be attributed to the cost of providing network connectivity services. The Exchange is now presenting the results of the cost allocation review in a way that corresponds directly with income statement expense line items to provide greater transparency into its actual costs associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fees are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing connectivity and will not result in excessive pricing or supracompetitive profit, when comparing the Exchange's total annual expense associated with providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5a) and b) of the Fee Schedule to adopt the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members[3] and non-Members of the

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to adopt network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections (with the exception of the 10Gb ULL) are shared connections (collectively, the ''Shared Connections''), and thus can be utilized to access the Exchange and both of the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX PEARL''). The 10Gb ULL connection is a dedicated connection (''Dedicated Connection''), which provides network connectivity solely to the trading platforms, market data systems, and test system facilities of MIAX Emerald. These proposed fees are collectively referred to herein as the ''Proposed Fees.'' The amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL.[4] While the Exchange is new and only launched trading on March 1, 2019, since: (i) All of the Proposed Fees (except for the fee relating to the 10Gb ULL connection) relate to Shared Connections, and thus are the same amounts as are currently in place at MIAX and MIAX PEARL; (ii) all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections (without paying any new incremental connectivity fees), the Exchange is providing similar information to that which was provided in the MIAX and PEARL Fee Filings, including providing detail about the market participants impacted by the Proposed Fees, as well as the costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

The Exchange initially filed the Proposed Fees on March 1, 2019, designating the Proposed Fees immediately effective.[5] The First Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[6] The First Proposed Rule Change provided information about the market participants impacted by the Proposed Fees, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[7] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the First Proposed Rule Change.[8]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the Proposed Fees. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the First Proposed Rule Change. Despite the objection to the Proposed Fees, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.''[9] The IEX Letter specifically argued that the Proposed Fees were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX Emerald and its affiliates considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the First Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fees. Specifically, the Second Healthy Markets Letter stated that the First Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

> The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[10]

On April 29, 2019, the Exchange withdrew the First Proposed Rule Change.[11]

The Exchange refiled the Proposed Fees on April 30, 2019, designating the Proposed Fees immediately effective.[12] The Second Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[13] The Second

[4] *See* SR–MIAX–2019–31 and SR–PEARL–2019–21 (the ''MIAX and PEARL Fee Filings'').

[5] *See* Securities Exchange Act Release No. 85316 (March 14, 2019), 84 FR 10350 (March 20, 2019) (SR–EMERALD–2019–11) (the ''First Proposed Rule Change'').

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[8] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (''Second Healthy Markets Letter'').

[9] *See* IEX Letter, pg. 1.

[10] *See* Second Healthy Markets Letter, pg. 2.

[11] *See* SR–EMERALD–2019–11.

[12] *See* Securities Exchange Act Release No. 85839 (May 10, 2019), 84 FR 22192 (May 16, 2019) (SR–EMERALD–2019–20) (the ''Second Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt System Connectivity Fees).

[13] *Id.*

Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fees are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fees are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees (the ''Guidance'').[14]

The Commission received two comment letters on the Second Proposed Rule Change, after the Guidance was released.[15] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Second Proposed Rule Change to justify the Proposed Fees based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Second Proposed Rule Change. Also, Healthy Markets did not comment on the Second Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Second Proposed Rule Change.[16]

The Exchange refiled the Proposed Fees on June 26, 2019, designating the Proposed Fees immediately effective.[17] The Third Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[18] The Third Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fees are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supracompetitive profit, in light of the Guidance issued by Commission staff subsequent to the Second Proposed Rule Change.

The Commission received three comment letters on the Third Proposed Rule Change.[19]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supracompetitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Third Proposed Rule Change.[20]

The Exchange is now refiling the Proposed Fees to provide greater detail concerning the Exchange's revenue and cost allocation as it pertains to the Exchange's connectivity costs. Further, the Exchange believes that the Proposed Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supracompetitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fees are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange offers to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange also offers to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its disaster recovery facility, consisting of a 1Gb fiber connection and a 10Gb connection.

For the Shared Connections, the Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL, via a single, shared connection. Any Member or non-Member can purchase a Shared Connection.

For the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect. Accordingly, the Exchange is able to offer to its Members 10Gb ULL connectivity at a lower price point than is offered on MIAX and MIAX PEARL, the price difference being reflective of the lower cost to the Exchange.

For the Shared Connections, Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange, MIAX, and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. Thus, since all of the Members of MIAX Emerald are also members of either

[14] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[15] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

[16] *See* SR–EMERALD–2019–20.

[17] *See* Securities Exchange Act Release No. 86344 (July 10, 2019), 84 FR 34030 (July 16, 2019) (SR–EMERALD–2019–24) (the ''Third Proposed Rule Change'').

[18] *Id.*

[19] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (''Fourth SIFMA Letter'').

[20] *See* SR–EMERALD–2019–24.

MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections, most Members of MIAX Emerald have instant connectivity to the Exchange without paying any new incremental connectivity fees, as more fully-detailed below.

The Exchange proposes to establish the monthly network connectivity fees for such connections for both Members and non-Members. As discussed above, the amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL. The amount of the Proposed Fee for the Dedicated Connection is offered at a substantial discount to the amount currently in place at MIAX and MIAX PEARL. The reasons for the substantial discount are that the Dedicated Connection offers access to only a single market (the Exchange), whereas the 10Gb ULL connection offered by MIAX and MIAX PEARL offers access to two markets (MIAX and MIAX PEARL), as well as cost savings the Exchange was able to achieve (and thus pass through to its Members) as a result of a dedicated architecture. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be as follows: (a) 1,400 for the 1Gb connection; and (b) $6,000 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be as follows: (a) $550 for the 1Gb connection; and (b) $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(4) of the Act [22] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [23] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [24]

First, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fees are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX Emerald as compared to the much greater number of members at other options exchanges (as further detailed below). MIAX Emerald is a brand new exchange, having only commenced operations in March 2019. Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. Further, of the number of Members that connect directly to MIAX Emerald, many such Members do not purchase market data from MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchanges but not Members of MIAX Emerald. For example, the following are not Members of MIAX Emerald: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX Emerald, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

SIFMA's argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements as suggested by SIFMA. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX Emerald or its affiliates, MIAX and MIAX PEARL, they do not purchase connectivity to MIAX Emerald, and they do not purchase market data from MIAX Emerald. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX Emerald, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[25] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase a 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX Emerald notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

Contrary to SIFMA's argument, there is competition for connectivity to MIAX Emerald and its affiliates. MIAX Emerald competes with eight (8) non-Members, who resell MIAX Emerald connectivity. These are resellers of MIAX Emerald connectivity—they are not arrangements between broker-dealers to share connectivity costs, as SIFMA suggests. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX Emerald (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX Emerald does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX Emerald to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. In fact, there are currently seven (7) non-Members that purchase 1Gb direct connectivity that are able to access MIAX Emerald, MIAX and MIAX PEARL. Those non-Members resell that connectivity to eight (8) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eight (8) customers also purchase connectivity directly from MIAX Emerald and/or its affiliates, MIAX and MIAX PEARL. Accordingly, indirect connectivity is a viable alternative used by non-Members of MIAX Emerald, constraining the price that MIAX Emerald is able to charge for connectivity to its Exchange.

The Exchange,[26] MIAX,[27] and MIAX PEARL [28] are comprised of 41 distinct members amongst all three exchanges, excluding any additional affiliates of such members that are also members of the Exchange, MIAX, MIAX PEARL, or any combination thereof. Of those 41 distinct members, 28 of those distinct members are Members of MIAX Emerald. (Currently, there are no Members of MIAX Emerald that are not also members of MIAX or MIAX PEARL, or both.) Of those 28 distinct Members of MIAX Emerald, there are 6 Members that have no connectivity to the Exchange. Members are not forced to purchase connectivity to the Exchange, and these Members have elected not to purchase such connectivity. Of note, these same 6 Members also do not have connectivity to either MIAX or MIAX PEARL. These Members either trade indirectly through other Members or non-Members that have connectivity to the Exchange, or do not trade and conduct another type of business on the Exchange. Of the remaining 22 distinct Members of MIAX Emerald, *all 22* of those distinct Members already had connectivity to the Exchange via existing Shared Connections, thus providing all such 22 MIAX Emerald Members with instant connectivity to the Exchange without paying any new incremental connectivity fees.

Further, of those 22 Members, 14 of such Members elected to purchase additional connectivity to the Exchange, including additional Shared Connections and additional Dedicated Connections. The Exchange made available in advance to all of its prospective Members its proposed connectivity pricing (subject to regulatory clearance), in order for those prospective Members to make an informed decision about whether to become a Member of the Exchange and whether to purchase connectivity to the Exchange. Accordingly, each such Member made the decision to become a Member of the Exchange and to purchase connectivity to the Exchange, knowing in advance the connectivity pricing. And the vast majority of the additional connectivity purchased by those Members were for Dedicated Connections, the most expensive connectivity option.

As a result, of those 22 Members, through existing Shared Connections, newly purchased Shared Connections, and newly purchased Dedicated Connections: 14 Members have 1Gb (primary/secondary) connections; 13 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 10 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections. All such Members with those Shared Connections and Dedicated Connections trade on MIAX Emerald.

The 6 Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 6 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

In addition, there are 5 non-Member service bureaus that already have connectivity to the Exchange via existing Shared Connections, thus providing all 5 of those non-Member service bureaus with instant connectivity to the Exchange without paying any new incremental connectivity fees. These non-Members freely purchased their connectivity from one of the Exchange's affiliates, either MIAX or MIAX PEARL, in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options.

[25] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

[26] The Exchange has 28 distinct Members, excluding affiliated entities. *See* MIAX Emerald Exchange Member Directory, available at *https://www.miaxoptions.com.*

[27] MIAX has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com.*

[28] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com.*

The Exchange believes that the Proposed Fees are fair, equitable and not unreasonably discriminatory because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers two direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX Emerald recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb ULL direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Thus, the value of the 1Gb alternative is much lower than value of a 10Gb ULL alternative, when measured based on the type of Exchange access it offers, which is the basis for difference in price between a 1Gb connection and a 10Gb ULL connection. Approximately just less than half of MIAX Emerald, MIAX and MIAX PEARL Members that connect (15 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and, therefore, consume less resources from the network. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Exchange believes the allocation of the Proposed Fees ($6,000 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the network resources consumed by the market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange.

The Exchange launched trading on March 1, 2019. Thus, at the time that the 14 Members who elected to purchase connectivity to the Exchange, the Exchange was untested and unproven, and had 0% market share of the U.S. options industry. For July of 2019, the Exchange had only a 0.68% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[29] For July of 2019, the Exchange's affiliate, MIAX, had only 3.61% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[30] For July of 2019, the Exchange's affiliate, MIAX PEARL, had only 5.08% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[31] The Exchange is not aware of any evidence that a combined market share less than 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition. Certainly, an untested and unproven exchange, with less than 1% market share in any month, and no rule or requirement that a market participant must join or connect to it, does not have anti-competitive pricing power, with respect to setting the pricing for the Dedicated Connections or the Shared Connections. If the Exchange were to attempt to establish unreasonable connectivity pricing, then no market participant would join or connect. Therefore, since 28 distinct Members joined MIAX Emerald and 14 of those distinct Members purchased additional connectivity to the Exchange, all knowing, in advance, the connectivity fees, the Exchange believes the Proposed Fees are reasonable, equitable, and not unfairly discriminatory.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX Emerald must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, see the R2G Services LLC (''R2G'') letter based on BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[32] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants are proposing to access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 34 total Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[33] Nasdaq ISE, LLC has approximately 100 members,[34] and NYSE American LLC has over 80 members.[35] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 34 Members.

Further, since there are 41 distinct members amongst all three exchanges, and only 28 of those distinct members decided to become Members of MIAX Emerald, there were 13 distinct

[29] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[30] *Id.*

[31] *Id.*

[32] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[33] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[34] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[35] *See https://www.nyse.com/markets/american-options/membership#directory.*

members that decided *not* to become Members of MIAX Emerald. This further reinforces the fact that all market participants are not required to be Members of the Exchange and are not required to connect to the Exchange. It is a choice whether to join and it is a choice to connect. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

With respect to the now MIAX Emerald Members that had Shared Connections in place as of August 1, 2018 (via a previously purchased Shared Connection from MIAX or MIAX PEARL), the Exchange finds it compelling that all of those Members continued to purchase those Shared Connections after August 1, 2018, when MIAX and MIAX PEARL increased the connectivity fees for the Shared Connections to the current amounts proposed by the Exchange herein. In particular, the Exchange believes that the Proposed Fees for the Shared Connections are reasonable because MIAX and MIAX PEARL, which charge the same amount for the Shared Connections, did not lose any Members (or the number of Shared Connections each Member purchased) or non-Member Shared Connections when MIAX and MIAX PEARL proposed to increase the connectivity fees for the Shared Connections on August 1, 2018. For example, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, 12 Members purchased 1Gb connections. The vast majority of those Members purchased multiple such connections, the number of connections depending on their throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same 12 Members purchased 1Gb connections. Furthermore, the total number of connections did not decrease from July to August.

Further, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when MIAX and MIAX PEARL increased its fees. Furthermore, the Exchange understands that MIAX and MIAX PEARL did not receive any official comment letters or complaints from any now Members of MIAX Emerald who had Shared Connections in place as of July 2018 regarding the increased fees regarding how the change was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is set too high (the R2G example),[36] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand as SIFMA suggests. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fees are equitably allocated among Members and non-Members, as evidenced by the fact that the fees are allocated across all connectivity alternatives, and there is not a disproportionate number of Members purchasing any alternative—14 Members have 1Gb (primary/secondary) connections; 14 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 11 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections. Further, the Exchange believes that the fees are reasonably allocated as the users of the higher bandwidth connections consume the most resources of the Exchange's network. It is these firms that also account for the vast majority of the Exchange's trading volume. The purchasers of the 10Gb ULL connectivity account for approximately 79% of the volume on the Exchange. For example, for all of July 2019, 1.9 million contracts of the 2.4 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume.

Second, the Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fees will permit recovery of the Exchange's costs and will not result in excessive or supracompetitive profit. The Proposed Fees will allow the Exchange to recover a portion (less than all) of the costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other infrastructure to support this technology. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

The costs associated with making the network accessible to Exchange Members and non-Members, through the expansion associated with new Shared Connections and Dedicated Connections, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year in the past two years, and are projected to increase year-over-year in the future. This is due to several factors, including costs associated with maintaining and expanding a team of highly-skilled network engineers, fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's research and development (''R&D'') efforts.

In order to provide more detail and to quantify the Exchange's costs, the Exchange notes that costs are associated with the infrastructure and headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. Additionally, the Exchange incurred costs in the expansion/buildout of the network leading up to the launch of operations, and the network maintenance costs continue to increase year-over-year. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX Emerald and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX Emerald and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network

[36] *See supra* note 32.

infrastructure of MIAX Emerald and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million.

A more detailed breakdown of the expense increases since the initial phases of the buildout of the Exchange over two years ago include the following: With respect to the network, there has been an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee cost, this is the cost associated with MIAX Emerald consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX Emerald to effectively pay its competitors for this connectivity.

There was also significant capital expenditures over this same period to upgrade and enhance the underlying technology components. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with the buildout, maintenance, and enhancement of its network infrastructure.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset costs such costs.

Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. The Exchange also incurs costs associated with the maintenance and improvement of existing tools and the development of new tools.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. As an example, in the last year, R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry is a significant expense for the Exchange that also increases year-over-year, and thus the Exchange believes that it is reasonable to offset a portion of those costs through establishing network connectivity fees, as proposed herein. Overall, the Proposed Fees are projected to offset only a portion of the Exchange's network connectivity costs. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 audited financial statements which will be publicly available as part of the Exchange's Form 1 Amendment, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fees are fair and reasonable because they will not result in excessive pricing or supracompetitive profit, when comparing the total annual expense of MIAX Emerald associated with providing network connectivity services versus the total projected annual revenue of the Exchange associated with providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services for MIAX Emerald was approximately $4.7 million. The $4.7 million in total annual expense is comprised of the following, all of which are directly related to the provision of network connectivity services by MIAX Emerald to its respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX Emerald to provide the network connectivity services. All such expenses are more fully-described below, and are mapped to MIAX Emerald's 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements'') which are filed with the Commission as part of the Form 1 Amendment of MIAX Emerald and are available to the public.

For 2018, total third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $728,246. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX Emerald trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX Emerald's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''), which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and

communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion of the expense relating to the provision of network connectivity services). Accordingly, MIAX Emerald does not allocate its entire information technology and communication costs to the provision of network connectivity services.

For 2018, total internal expense, relating to the internal costs of MIAX Emerald to provide the network connectivity services, was $4,031,491. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support connectivity for trading; and (3) occupancy costs for leased office space for staff that support network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion of the expense relating to the provision of network connectivity services). Accordingly, MIAX Emerald does not allocate its entire costs contained in those line items to the provision of network connectivity services.

MIAX Emerald's employee compensation and benefits expense relating to providing network connectivity services was $3,262,226, which is only a portion of the $10,193,837 total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. MIAX Emerald's depreciation and amortization expense relating to providing network connectivity services was $416,807, which is only a portion of the $616,785 total expense for depreciation and amortization that is stated in the 2018 Financial Statements. MIAX Emerald's occupancy expense relating to providing network connectivity services was $352,458, which is only a portion of the $732,720 total expense for occupancy that is stated in the 2018 Financial Statements.

The total projected MIAX Emerald revenue for providing network connectivity services, on a full year run rate, is $3.0 million. However, since MIAX Emerald was launched on March 1, 2019, it did not start collecting revenue for network connectivity services until March 1, 2019. Thus, for 2018, MIAX Emerald's expense for providing network connectivity services was approximately $4.7 million, while its revenue for providing network connectivity services was $0. For 2019, MIAX Emerald projects 10 full months of revenue for network connectivity services (March 1–December 31), of $2.5 million, however it also projects increased expense for providing network connectivity services for 2019, as compared to 2018. Nevertheless, utilizing 2018 expense figures, for 2019, MIAX Emerald's expense for providing network connectivity services would be approximately $4.7 million, while its revenue for providing network connectivity services would be $2.5 million. On a fully annualized basis, utilizing 2018 expense figures and 2019 projected revenue extrapolated out to a full year run rate, MIAX Emerald's expense for providing network connectivity services would be approximately $4.7 million, while its revenue for providing network connectivity services would be $3 million. Accordingly, for both 2018 and 2019, the total MIAX Emerald projected revenue for providing network connectivity services during 2018 ($0) and during 2019 ($2.5 million) is less than total actual and projected MIAX Emerald expense for providing network connectivity services for 2018 ($4.7 million) and 2019 (greater than $4.7 million).

The Exchange also believes its proposal to offer 10Gb ULL connections as dedicated connections furthers the objectives of Section 6(b)(5) of the Act [37] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. In particular, for the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect. A dedicated 10Gb ULL connection does not offer any unfair advantage over a shared 10GB ULL connection, as is being offered solely as a cost-saving measure to the Exchange and its Members.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[38] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities,[39] however the Exchange also notes that the Exchange's 10Gb ULL connection is dedicated solely to one market (the Exchange) whereas the Exchange believes that other exchanges offer a shared 10Gb ULL connection to multiple markets. While MIAX Emerald's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX Emerald believes that it offers significant value to Members over other exchanges in terms

[37] 15 U.S.C. 78f(b)(5).

[38] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[39] *Id.*

of network monitoring and reporting, which MIAX Emerald believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[40]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fees are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

The Exchange believes that the Proposed Fees do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of the Exchange as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[41] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[42] and Rule 19b–4(f)(2)[43] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2019–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2019–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments

[40] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[41] *See supra* note 38.

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

[43] 17 CFR 240.19b–4(f)(2).

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2019–31 and should be submitted on or before September 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19215 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86838; File No. SR–ICC–2019–008]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Clearing Participant Default Management Procedures and ICC Risk Management Framework

August 30, 2019.

I. Introduction

On June 28, 2019, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–ICC–2019–008) to formalize and enhance the ICC Clearing Participant (''CP'') Default Management Procedures (''Default Management Procedures'') and enhance its Risk Management Framework.[3] The proposed rule change was published in the **Federal Register** on July 16, 2019.[4] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

Currently, ICC's default management rules and procedures are set forth throughout several documents, including the ICC Rules, the Default Auction Procedures—Initial Default Auctions, and the Secondary Auction Procedures.[5] In addition, Appendix 3 to the Risk Management Framework (''Appendix 3'') includes a high-level, general description of ICC's overall default management procedures, with citations and cross-references throughout to the documents described above. The proposed rule change would (i) formalize and enhance ICC's existing Default Management Procedures by creating a stand-alone document that replaces, restates, and substantially expands existing Appendix 3; (ii) within the new Default Management Procedures, provide additional detail and description with respect to ICC's existing rules and procedures; and (iii) make related enhancements to the Risk Management Framework by incorporating appropriate references to the proposed stand-alone Default Management Procedures and making targeted changes clarifying guarantee fund replenishment and assessment contributions. The proposed Default Management Procedures would identify, describe, and provide additional detail with respect to ICC's existing default management rules and procedures, but would not make substantive changes to any of those existing default management rules and procedures, which would still reside in the ICC Rules and other locations.

A. Default Management Procedures

The proposed Default Management Procedures would identify and describe ICC's overall default management process, including (i) the actions that ICC will take to determine if a CP is in default and (ii) the actions ICC will take in connection with such a default and to close-out the defaulting CP's positions. In describing ICC's overall default management process, the Default Management Procedures would restate and substantially expand Appendix 3, but would not substantively change or otherwise replace ICC's existing default management rules and procedures. Where appropriate, the proposed new stand-alone Default Management Procedures would cross-reference and cite to ICC's existing default management rules and procedures to avoid duplication, and as discussed below, in some instances clarify and enhance them by, for example, providing additional detail, such as assigning responsibility for default management actions and adding instructions on how to perform default management actions.[6] In describing the actions ICC will take to determine if a CP is in default and, subsequently, in connection with such a default, the Default Management Procedures document includes a list of defined terms that are key for default management and an overview of ICC's default management process. In describing and providing an overview of ICC's default management process, the proposed Default Management Procedures include descriptions of sub-processes such as identifying those clearing members that are at risk of defaulting or are in default, declaring a default, transferring a defaulter's client portfolios to non-defaulting Futures Commission Merchants (''FCM''), consulting with the CDS Default Committee, performing Standard Default Management Actions and Secondary Default Management Actions to facilitate Close-Out, and managing default resources.[7] Further, the Default Management Procedures describe how ICC and its CPs maintain operational readiness to execute the default management process, including administering the CDS Default Committee rotation process, working with customers of CPs who want to directly participate in auctions, maintaining up-to-date contact information, and testing the default management process.[8]

The Default Management Procedures would also describe the sub-process of monitoring CPs. As part of a counterparty monitoring program, ICC performs daily, weekly, and quarterly monitoring designed, in part, to identify Default Risk CPs.[9] Additionally, the Default Management Procedures establish procedures that are specific to certain types of defaults and circumstances, including where a CP fails to meet payment obligations to ICC; a CP has filed for bankruptcy or is likely to fail to meet obligations due to dissolution, insolvency, or bankruptcy related events; a CP has not complied, or is likely not to comply, with certain limitations, conditions, or restrictions imposed on it by ICC; and a CP or its guarantor has failed, or is likely to fail,

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used herein but not otherwise defined have the meaning set forth in the Default Management Procedures, the Risk Management Framework and ICE Clear Credit rulebook, which is available at *https://www.theice.com/clear-credit/regulation.*

[4] Securities Exchange Act Release No. 34–86341 (July 10, 2019), 84 FR 34021 (July 16, 2019) (SR–ICC–2019–008) (''Notice'').

[5] Notice, 84 FR at 34021.

[6] *Id.*

[7] Notice, 84 FR at 34021–34023.

[8] Notice, 84 FR at 34022.

[9] *Id.*

to meet obligations of ICC membership.[10]

The actions taken after the identification of a potential default are the default declaration sub-process and the Default Management Procedures list actions that the Close-Out Team performs after activation but before a default declaration, such as initial meetings to discuss circumstances surrounding the default risk, strategy for the close-out, and plans for ICC to meet upcoming payment obligations.[11] The Default Management Procedures also contain procedures taken after declaration of default to prepare for a close-out.[12]

The Default Management Procedures also discuss the CDS Default Committee consultation sub-process. Certain matters are subject to consultation with the CDS Default Committee, including the unwinding of the defaulter's remaining portfolio and the structure and characteristics of an auction.[13] The Default Management Procedures establish procedures for convening and adjourning a CDS Default Committee meeting in addition to the actions taken at the initial CDS Default Committee meeting, which include reviewing the defaulter's cleared portfolio, the Close-Out strategy, the plan for transferring the Porting Portfolios to Potential Receiving FCMs, and a schedule for re-convening the CDS Default Committee over the period required to complete the Close-Out.[14]

The ICC Risk Department and Close-Out Team work together, in consultation with the CDS Default Committee, to implement the Close-Out strategy through Standard Default Management Actions.[15] Specifically, the Default Management Procedures incorporate instructions on executing Initial Cover Transactions by auction and bilaterally, conducting Initial Default Auctions, and executing bilateral direct liquidation transactions in the market to liquidate positions.[16] The document further assigns responsibility for tracking the position changes that result from the movement of positions or the creation of new positions.[17]

In addition to Standard Default Management Actions, ICC may take Secondary Default Management Actions to facilitate the Close-Out where default resources are significantly depleted or no default resources remain.[18] ICC may call for assessment contributions and the Default Management Procedures discuss the procedures for calling for assessment contributions and initiating a Cooling-Off Period.[19] During the Cooling-Off Period, the Risk Department and Close-Out Team, in consultation with the CDS Default Committee, continue to try to liquidate the defaulter's remaining portfolio through Secondary Auctions.[20] If available default resources are exhausted and ICC has not returned to a matched book, the Close-Out Team uses reasonable efforts to consult with the Risk Committee and then seeks the Board's decision on whether to enter a Loss Distribution Period, execute a partial tear-up, or terminate clearing services, which are detailed in the Default Management Procedures.[21]

Further, the Default Management Procedures provide an overview of the post-default porting sub-process.[22] The Risk Department, in consultation with the CDS Default Committee, determine which Porting Portfolios to try to transfer to Potential Receiving FCMs.[23] The Default Management Procedures also discuss specific procedures for post-default porting in the case of a bankruptcy-related default, which require ICC to communicate and coordinate with the defaulter's trustee in bankruptcy.[24]

The Default Management Procedures set forth the default resource management sub-process.[25] The document includes procedures for the identification and execution of collateral management activities that are necessary for ICC to meet upcoming payment obligations.[26] The Close-Out Team meets daily during the Close-Out Period to review the available liquid resources and determine how to meet upcoming payment obligations.[27] The Chief Operating Officer and Head of Treasury coordinate the execution of collateral management activities, including liquidating non-cash collateral in the defaulter's house and/or client accounts or utilizing ICC's committed FX or committed repo facilities.[28] Further, the Default Management Procedures describe the maintenance of a Default Management Ledger, which serves as a record to facilitate decision making and implement ICC's default waterfall; the discussion points during the Close-Out Team's daily meeting during the Close-Out Period; and the application of any special payments during the Close-Out Period.[29]

B. Risk Management Framework

ICC is proposing related default management enhancements to the Risk Management Framework. Specifically, ICC proposes to incorporate a reference to the Default Management Procedures in the 'Governance and Organization' section of the Risk Management Framework to specify that the Default Management Procedures contain details regarding default management roles and responsibilities of the Board, ICC management, and relevant committees.[30] Additionally, ICC proposes changes to the 'Waterfall Level 6: GF Replenishment' sub-section to more clearly describe CPs' obligations with respect to replenishment and assessment contributions to the Guarantee Fund (''GF''). The proposed edits provide additional detail regarding the aggregate liability of CPs for replenishment and assessment contributions. Specifically, the edits clarify that if the cap on the additional GF contributions is reached, ICC may apply additional Initial Margin (''IM'') requirements if necessary to maintain compliance with regulatory financial resources requirements.[31] The proposed changes further discuss how the additional IM requirements are computed and communicated to CPs.[32] ICC also proposes to clarify the maximum contribution of a retiring CP that has given notice of its intent to terminate its CP status.[33] Finally, because the proposed Default Management Procedures would restate and substantially expand existing Appendix 3 of the Risk Management Framework, ICC proposes to remove Appendix 3 and replace a reference to it in the Risk Management Framework with a reference to the Default Management Procedures instead.[34]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such

[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Notice, 84 FR at 34023.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*

proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[35] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[36] and Rules 17Ad–22(b)(3),[37] 17Ad–22(d)(4),[38] 17Ad–22(d)(8),[39] and 17Ad–22(d)(11)[40] thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.[41]

The Commission believes that by creating a stand-alone document that (i) formalizes and enhances ICC's existing default management procedures; (ii) identifies and cross-references the existing default management rules and procedures that currently are located in several other ICC documents; and (iii) describes the sub-processes involved in, and parties responsible for, those default management procedures, the proposed rule change would provide additional clarity, transparency, and detail with respect to ICC's default management procedures, which in turn would help promote prompt and accurate clearance settlement and the safeguarding of securities and funds in ICC's control. Specifically, the Default Management Procedures describe several default management sub-processes and the parties responsible. As described above, ICC consults with the CDS Default Committee, whose membership consists of experienced trading personnel at CDS clearing participants, prior to taking default actions. Further, the Default Management Procedures describe that the ICC President may activate the team responsible for overseeing the default management process, the Close-Out Team, as well as the various processes for managing default such as the counterparty monitoring process, default declaration process, and the standard and secondary default management actions. The Commission believes that these processes provide ICC the ability to regularly (daily, weekly, and quarterly) monitor those clearing participants at risk of default, develop default management strategies (standard or secondary), and execute default management actions (*i.e.,* auctions, tear-ups). The Commission believes that this formalized process for dealing with defaults before and after their declaration prepares ICC with assigned personnel and requisite strategies for effectively managing defaults. This level of detail in turn could help enhance ICC's ability to manage losses and thus maintain adequate financial resources necessary to promptly and accurately clear securities transactions and safeguarding of securities and funds in its custody and control.

Similarly, the Commission believes that the proposed changes to the Risk Management Framework support ICC's ability to maintain adequate financial resources. As described above, the changes to the Risk Management Framework more clearly describe CPs' obligations with respect to replenishment and assessment contributions to the guarantee fund, and provide additional detail regarding the aggregate liability of CPs for replenishment and assessment contributions. Further, the proposed changes clarify that if the cap on the additional GF contributions is reached, ICC may apply additional IM requirements if necessary to maintain compliance with regulatory financial resources requirements, and further discuss how the additional IM requirements are computed and communicated to CPs. ICC also proposes to clarify the maximum contribution of a retiring CP that has given notice of its intent to terminate its CP status. The Commission believes that by revising the Risk Management Framework with this additional detail, ICC will ensure that it has the procedures in place to obtain additional resources when necessary, thereby strengthening its financial position and ability to promptly and accurately clear securities transactions and safeguard funds and securities in its custody or control. Therefore, the Commission believes that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.

B. Consistency With Rule 17Ad–22(b)(3)

Rule 17Ad–22(b)(3) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a central counterparty for security-based swaps.[42]

As described above, the proposed rule change would provide detailed instructions for managing defaults. Specifically, the Default Management Procedures discuss the responsible parties and actions taken prior and in response to a default. The proposed rule change describes ICC's counterparty monitoring program in which it performs daily, weekly, and quarterly monitoring designed, in part, to identify Default Risk CPs. The Commission believes that by formalizing procedures in this way ICC strengthens its ongoing system for detecting and coping with financial stress brought on by CP defaults and enhances its ability to manage its financial resources to cope with events such as a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions.

Additionally, as stated above, ICC's Default Management Procedures would describe a variety of tools for dealing with defaults, for example, unwinding a defaulter's position and structuring an auction or executing bilateral direct liquidation transactions in the market; calling for assessment contributions from CPs to the guarantee fund; implementing reduced gains distributions; or executing a partial tear-up when available default resources are exhausted. Further, the Default Management Procedures set forth the process for default resource management, which involves the identification and execution of collateral management necessary for meeting upcoming payment obligations. As mentioned above, liquid resources are reviewed and decisions are made as to whether to liquidate non-cash collateral in the defaulter's house and/or client accounts or to use ICC's committed FX and repo facilities. The Commission believes that these procedures offer tools to strengthen ICC's ability to manage its financial resources and withstand the pressures of defaults. Consequently, the Commission believes that the proposed rule change as relates to the Default Management Procedures is consistent with the obligations of Rule 17Ad–22(b)(3).

[35] 15 U.S.C. 78s(b)(2)(C).
[36] 15 U.S.C. 78q–1(b)(3)(F).
[37] 17 CFR 240.17Ad–22(b)(3).
[38] 17 CFR 240.17Ad–22(d)(4).
[39] 17 CFR 240.17Ad–22(d)(8).
[40] 17 CFR 240.17Ad–22(d)(11).
[41] 15 U.S.C. 78q–1(b)(3)(F).
[42] 17 CFR 240.17Ad–22(b)(3).

Similarly, the Commission believes that the proposed enhancements to the Risk Management Framework will strengthen ICC's ability to maintain sufficient financial resources to withstand a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. In particular, as described above, ICC proposes to more clearly describe a CP's obligations with respect to replenishment and assessment contributions to the GF. The proposed edits provide additional detail regarding the aggregate liability of CPs for replenishment and assessment contributions. If the cap on the additional GF contributions is reached, ICC may apply additional IM requirements if necessary to maintain compliance with regulatory financial resources requirements. The proposed changes further discuss how the additional IM requirements are computed and communicated to CPs. ICC also proposes to clarify the maximum contribution of a retiring CP that has given notice of its intent to terminate its CP status. The Commission believes that these clarifications will enhance ICC's ability to obtain additional financial resources by making parties aware of their financial liabilities and will in turn help it withstand a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. The Commission believes, therefore, that the changes to the Risk Management Framework are consistent with Rule 17Ad–22(b)(3).

C. Consistency With Rule 17Ad–22(d)(4)

Rule 17Ad–22(d)(4) requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure, and have adequate scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.[43]

As discussed above, the Default Management Procedures describe how ICC conducts monitoring of CPs on a daily, weekly, and quarterly basis. The Commission believes that the activities, as well as others set forth in the Default Management Procedures, help ICC and its CPs maintain operational readiness to execute the default management process. For example, the document sets forth ICC's processes for carrying out an annual Default Test, reviewing the results of the annual Default Test, and maintaining up-to-date contact information for default contacts. Such testing and preparation allow ICC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures and implement systems that are reliable, resilient and secure, and have adequate scalable capacity. Consequently, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(d)(4).

D. Consistency With Rule 17Ad–22(d)(8)

Rule 17Ad–22(d)(8) requires, in relevant part, that ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[44]

As described above, the Default Management Procedures discuss the role of various parties, including ICC's President, Risk Committee, CDS Default Committee, and Board. In particular, upon identifying default risk CPs, the ICC President may take no action or activate the team responsible for overseeing the default management process, which is composed of ICC management, the ICC Risk Oversight Officer, and the most senior member of the Treasury Department and which comprise the Close-Out Team, to move forward with the process of declaring a default. Further, if available default resources are exhausted and ICC has not returned to a matched book, the Close-Out Team uses reasonable efforts to consult with the Risk Committee and then seeks the Board's decision on whether to engage in secondary default management actions such as entering a Loss Distribution Period, executing a partial tear-up, or terminating clearing services. The Default Management Procedures also provide an overview of the post-default porting sub-process in which the Risk Department, in consultation with the CDS Default Committee, determines which Porting Portfolios to try to transfer. The Commission believes that these procedures represent comprehensive governance arrangements that are clear and transparent and promote the effectiveness of the clearing agency's risk management procedures by laying out various responsibilities throughout the default management process. Therefore, the Commission believes that the rule proposal is consistent with Rule 17Ad–22(d)(8).

E. Consistency With Rule 17Ad–22(d)(11)

Rule 17Ad–22(d)(11) requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[45]

The Commission believes that because ICC's default management rules and procedures contained in the ICC Rules, the Default Auction Procedures—Initial Default Auctions, and the Secondary Auction Procedures are publically available on ICC's website and because the proposed Default Management Procedures clarify and augment ICC's existing rules and procedures relating to default management, the proposed rule change is consistent with the requirement to make key aspects of the clearing agency's default procedures publicly available.

Additionally, because of the monitoring and governance procedures prior to and directly after a default described above, the Commission believes that the proposed rule changes are consistent with the requirement to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. The Commission believes that the frequency of the monitoring system enhances ICC's ability to timely respond to default risk. Consequently, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(d)(11).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act''[46] and Rules 17Ad–22(b)(3), 17Ad–22(d)(4),

[43] 17 CFR 240.17Ad–22(d)(4).

[44] 17 CFR 240.17Ad–22(d)(8).

[45] 17 CFR 240.17Ad–22(d)(11).

[46] 15 U.S.C. 78q–1(b)(3)(F).

17Ad–22(d)(8), and 17Ad–22(d)(11) thereunder.[47]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[48] that the proposed rule change (SR–ICC–2019–008) be, and hereby is, approved.[49]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19212 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[47] 17 CFR 240.17Ad–22(b)(3), 17 CFR 240.17Ad–22(d)(4), (8), and (11).

[48] 15 U.S.C. 78s(b)(2).

[49] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86844; File No. SR–Phlx–2019–31]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Manner in Which It Calculates Volume, Liquidity and Quoting Thresholds Applicable To Billing on the Exchange in Relation to a Systems Issue Experienced by SIAC on August 12, 2019

August 30, 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 28, 2019, Nasdaq PHLX LLC (''Phlx'' 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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by SIAC on August 12, 2019, which impacted trade and quote dissemination across all markets.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 12, 2019 systems issue, which impacted trade and quote dissemination across all markets.[3] Specifically, on August 12, 2019, SIAC[4] determined to fail over to back up servers after receiving indications that its primary systems had become unstable, causing connectivity disruptions. The fail over to secondary systems failed to cure the problem, resulting in market-wide issues with the Consolidated Quote System and the Consolidated Tape System, including gaps in the intra-day trades, quotes, and other messages that were attempted to be sent to it. Consequently, the accuracy of the transaction and quotation data for August 12, 2019 is unknown.

As a result, the Exchange is unable to accurately calculate member transaction fees and credits, including calculations for the Exchange's incentive programs, since several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that members must satisfy in order to qualify for the particular rates (*e.g.,* percentage of Consolidated Volume, Average Daily Volume, and time at the NBBO). The Exchange therefore proposes to exclude August 12, 2019 from all tier calculations described in Equity 7[5] under the heading Order Execution and Routing in order to reasonably ensure that a member that would otherwise qualify for a particular threshold during August 2019, and the corresponding transaction rate and/or incentive, would not be negatively impacted by the August 12, 2019 systems issue.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] 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. In this regard, because the accuracy of the transaction and quotation data disseminated by SIAC for August 12, 2019 is unknown, the Exchange believes that it is reasonable to exclude August 12, 2019 from all tier calculations described in Equity 7, which would reasonably ensure that a member's qualification for various pricing programs would be based on the data that the Exchange believes is accurate. The Exchange also believes that the proposed rule change is reasonable because the SIAC systems issue that caused inaccurate transaction data was not within the Exchange's control nor can the Exchange correct or otherwise remediate the issue. Including August 12, 2019 transaction and quotation data for purposes of tier calculations described in Equity 7 under the heading Order Execution and Routing could result in inaccurate determinations for member rates based on the extent to which their transactions and quotations were impacted by the August 12, 2019 event in comparison to the overall inaccuracies in the data provided by SIAC for that date. Consequently, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 12, 2019 from all tier calculations described in the Order Execution and Routing section under Equity 7. Last, excluding August 12, 2019 from all tier calculations described

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See https://www.ctaplan.com/alerts#110000144324.*

[4] SIAC is the operator of the Consolidated Quote System and Consolidated Tape System, which disseminate real-time trade and quote information in New York Stock Exchange LLC (Network A) and Bats, NYSE Arca, NYSE American and other regional exchange (Network B) listed securities.

[5] The Order Execution and Routing section under Equity 7 provides the schedule of fees and credits applicable to the PSX's order execution and routing services.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

in the Order Execution and Routing section under Equity 7 is in the public interest because it will provide Exchange members with the closest approximation of the fees and credits that they would have been eligible for if accurate data for August 12, 2019 were available and included in the monthly calculation.

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 change would treat all market participants on the Exchange equally by excluding August 12, 2019 from all tier calculations described in Equity 7. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.

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 [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] 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. The Exchange begins the calculation and billing of member fees and credits in the Order Execution and Routing section under Equity 7 at the close of each month, and an operative delay would disrupt the normal billing process, which may cause expense and potential investor confusion. Therefore, 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 proposal as operative upon filing.[12]

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–Phlx–2019–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2019–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–31 and should be submitted on or before September 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19222 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 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).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86841; File No. SR–NYSEArca–2019–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To Amend the Listing Rule Applicable to Shares of the Aware Ultra-Short Duration Enhanced Income ETF

August 30, 2019.

I. Introduction

On May 15, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change to change the listing rule applicable to shares (''Shares'') of the Aware Ultra-Short Duration Enhanced In□come ETF (''Fund''), a series of the Tidal ETF Trust (''Trust''). The proposed rule change was published for comment in the **Federal Register** on June 4, 2019.[3] On July 8, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the Notice in its entirety.[4] On July 10, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which amended the proposed rule change as modified by Amendment No. 1.[5] On July 19, 2019, pursuant to Section 19(b)(2) of the Act,[6] the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendments No. 1 and No. 2.

II. Description of the Proposed Rule Change, as Modified by Amendments No. 1 and No. 2 [8]

The Exchange states that the Shares commenced trading on the Exchange on January 29, 2019, pursuant to the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600–E, which govern Managed Fund Shares,[9] and that the Fund's investments comply with those requirements.[10] According to the Registration Statement,[11] the investment objective of the Fund is to seek to maximize current income while maintaining a portfolio consistent with the preservation of capital and daily liquidity.

The Exchange filed the proposed rule change to modify the listing rule applicable to the Shares. The Exchange proposes certain deviations from the generic requirements, which it states are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns.[12]

A. The Fund's Permitted Investments

The Fund would seek to achieve its investment objective primarily by investing in ''Fixed Income Securities,'' which are: U.S. government securities; agency and non-agency asset-backed securities (''ABS'') and mortgage-backed securities (''MBS'') and collateralized mortgage obligations (''CMOs'');[13] floating or variable rate securities; collateralized bond obligations (''CBOs''), collateralized loan obligations (''CLOs'') and other collateralized debt obligations (''CDOs'' and, together with CBOs and CLOs, ''CDOs/CBOs/CLOs'');[14] corporate debt securities; municipal securities; inflation-indexed bonds; inflation-indexed securities issued by the U.S. Treasury; commercial paper (in addition to commercial paper that are cash equivalents);[15] convertible securities; and structured notes. In addition, the Fund could: (1) Hold cash and cash equivalents;[16] (2) enter into dollar rolls and short sales of Fixed Income Securities; (3) purchase securities and other instruments under when-issued, delayed delivery, to be announced or forward commitment transactions; (4) invest in private placements and Rule 144A securities; (5) hold U.S. and non-U.S. exchange-traded common stocks, preferred stocks, rights, warrants, exchange-traded notes (''ETNs''),[17] exchange-traded funds (''ETFs'');[18] and (6) hold securities of other investment companies,[19] subject to applicable limitations under Section 12(d)(1) of the 1940 Act. Further, the Fund could hold the following U.S. and non-U.S. exchange-listed and over-the-counter (''OTC'') derivative instruments: OTC foreign currency forwards; U.S. and non-U.S. exchange-listed futures and options on stocks, Fixed Income Securities, interest rates, credit, currencies, commodities or indices on the foregoing securities and financial instruments; and OTC options on stocks, Fixed Income Securities, interest rates, credit, currencies, commodities,

[3] *See* Securities Exchange Act Release No. 85955 (May 29, 2019), 84 FR 25863 (''Notice'').

[4] In Amendment No. 1, the Exchange: (1) Provided clarification regarding certain of the Fund's permitted investments; (2) changed certain citations supporting its proposals; (3) expanded upon an argument in support of one of its proposals and deleted an argument that had been offered in support of another proposal; (4) expanded certain representations regarding the Exchange's ability to obtain trading information regarding certain of the Fund's permitted investments; and (5) made other technical changes. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. The amendments to the proposed rule change are available at *https://www.sec.gov/comments/sr-nysearca-2019-38/srnysearca201938.htm.*

[5] In Amendment No. 2, the Exchange: (1) Modified the list of the Fund's permitted investments; and (2) made a technical change. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 86414, 84 FR 35892 (July 25, 2019) (designating September 2, 2019, as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change).

[8] For a complete description of the Exchange's proposal, *see* Notice, Amendments No. 1 and No. 2, *supra* notes 3, 4, and 5 respectively.

[9] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[10] *See* Amendment No. 1, *supra* note 4, at 4 n.3.

[11] On December 21, 2018, the Trust, which is registered under the 1940 Act, filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–227298 and 811–23377) (''Registration Statement''). The Exchange represents that the Trust will file an amendment to the Registration Statement as necessary to conform to the representations in the proposed rule change. *See id.,* n.5.

[12] *See id.* at 11.

[13] For purposes of this filing, non-agency ABS, non-agency MBS, and non-agency CMOs are referred to collectively herein as ''Private ABS/MBS.'' In the aggregate, Private ABS/MBS would not exceed more than 20% of the total assets of the Fund.

[14] For purposes of this filing, CDOs/CBOs/CLOs are excluded from the term Private ABS/MBS. CLOs are securities issued by a trust or other special purpose entity that are collateralized by a pool of loans by U.S. banks and participations in loans by U.S. banks that are unsecured or secured by collateral other than real estate. CBOs are securities issued by a trust or other special purpose entity that are backed by a diversified pool of fixed income securities issued by U.S. or foreign governmental entities or fixed income securities issued by U.S. or corporate issuers. According to the Exchange, CDOs/CBOs/CLOs are distinguishable from Private ABS/MBS because they are collateralized by bank loans or by corporate or government fixed income securities and not by consumer and other loans made by non-bank lenders, including student loans. Collectively, CDOs, CBOs, and CLOs would not exceed more than 10% of the total assets of the Fund.

[15] *See infra* note 16.

[16] For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to Rule 8.600–E.

[17] ETNs are securities as described in NYSE Arca Rule 5.2–E(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities).

[18] For purposes of this filing, ''ETFs'' are Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs would be listed and traded in the U.S. on a national securities exchange. According to the Exchange, while the Fund might invest in inverse ETFs, the Fund would not invest in leveraged (*e.g.,* 2X, -2X, 3X or -3X) ETFs.

[19] Investments in non-exchange-traded open-end management investment company securities would not exceed 20% of the total assets of the Fund.

or indices on the foregoing securities and financial instruments.[20]

B. Alternative Listing and Trading Criteria for the Shares

The Exchange represents that the Fund's portfolio satisfy all the generic listing requirements of Rule 8.600–E, except as discussed below.

The Fund proposes to invest in shares of non-exchange listed open-end management investment company securities. Such investments would not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600–E (U.S. Component Stocks) [21] because, according to the Exchange, it would be difficult or impossible to apply certain of the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) applicable to U.S. Component Stocks to mutual fund shares.[22] The Fund's portfolio holdings in such investment company securities would be limited to 20% of the total assets of the Fund.[23]

The Exchange proposes that, instead of complying with the requirement of Commentary .01(b)(1) to NYSE Arca Rule 8.600–E,[24] the Fund's Fixed Income Securities—other than Private ABS/MBS and CDOs/CBOs/CLOs—that in the aggregate account for at least 50% of the fixed income weight of the portfolio each would have a minimum original principal amount outstanding of $50 million or more. As proposed, Private ABS/MBS, CDOs/CBOs/CLOs held by the Fund would not be subject to any minimum original principal amount outstanding requirement.

The Exchange proposes that the Fund's investments in Private ABS/MBS not be required to comply with Commentary .01(b)(4) to NYSE Arca Rule 8.600–E.[25] According to the Exchange, all other Fixed Income Securities, including the Fund's CDOs/CBOs/CLOs, would be subject to the criteria in Commentary .01(b)(4).

Additionally, the Exchange proposes that the Fund's investments not be required to comply with Commentary .01(b)(5) t NYSE Arca Rule 8.600–E.[26] As mentioned above, the Fund would instead invest up to 20% of its total assets in Private ABS/MBS and up to 10% of its total assets in CDOs/CBOs/CLOs.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act,[28] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

According to the Exchange, the Shares would continue to satisfy the initial and continued listing criteria for Managed Fund Shares pursuant to NYSE Arca Rule 8.600–E, except for the requirements of Commentary .01(a)(1), (b)(1), (b)(4), and (b)(5).

As discussed above, the Fund will not meet the requirement in Commentary .01(b)(1) of NYSE Arca Rule 8.600–E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio shall each have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that, in the aggregate, account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs would be excluded from this requirement and would not be subject to a requirement for a minimum original principal amount outstanding. The Exchange represents that at least 50% of the fixed income weight of the Fund's portfolio would still be required to have a substantial minimum original principal amount outstanding.[29] The Exchange asserts that not subjecting Private ABS/MBS and CDOs/CBOs/CLOs to a standard for minimum original principal amount outstanding would allow the Fund to invest in a larger variety of Private ABS/MBS and CDOs/CBOs/CLOs, which would help the Fund meet its investment objectives and diversify its holdings in such securities.[30]

Also as discussed above, the Fund, with respect to its investments in Private ABS/MBS, will not comply with the generic listing requirement that

[20] *See* Amendment No. 2, *supra* note 5.

[21] Commentary .01(a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a). Commentary .01(a)(1) to Rule 8.600–E provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks must meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

[22] *See* Amendment No. 1, *supra* note 4, at 16.

[23] *See id.,* at 7.

[24] Commentary .01(b)(1) requires that fixed income securities portfolio components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of $100 million or more.

[25] Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country. Unlike the Fund's Private ABS/MBS, the Fund's CDOs, CBOs, and CLOs would be subject to the criteria in Commentary .01(b)(4).

[26] Commentary .01(b)(5) requires that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities not account, in the aggregate, for more than 20% of the weight of the portfolio.

[27] 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).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Amendment No. 1, *supra* note 4, at 11.

[30] *See id.* at 11–12.

securities comprising at least 90% of the fixed income weight of the Fund's portfolio meet one of the criteria in Commentary .01(b)(4) to NYSE Arca Rule 8.600–E.[31] The Exchange represents that, Fixed Income Securities, including CDOs/CBOs/CLOs, held by the Fund other than Private ABS/MBS, will continue to meet this requirement. The Exchange also represents that it will not invest more than 20% of the Fund's total assets in Private ABS/MBS. CDOs/CBOs/CLOs, which will meet the requirements of Commentary .01(b)(4), will be limited to 10% of the portfolio. The Exchange believes that this limitation will help the Fund maintain portfolio diversification and reduce manipulation risk.[32] The Commission notes that it has previously approved the listing of Managed Fund Shares that exclude Private ABS/MBS from the provisions of rules comparable to Commentary .01(b)(4) to NYSE Arca Rule 8.600–E.[33]

The Commission notes that CDOs/CBOs/CLOs will not be included in the definition of Private ABS/MBS and, as a result, will not be subject to the restriction on aggregate holdings of Private ABS/MBS set forth in Commentary .01(b)(5) to NYSE Arca Rule 8.600–E, which limits investments in Private ABS/MBS to 20% of the weight of the portfolio. Instead, the Fund may invest up to 20% of the Fund in Private ABS/MBS and up to 10% of the fund's total assets in CDOs/CBOs/CLOs such that, in the aggregate, they may account for up to 30% of the weight of the Fund's portfolio. The Commission notes that it has previously approved similar limitations for Private ABS/MBS and CDOs/CBOs/CLOs.[34]

Finally, the Fund will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600–E [35] in connection with the Fund's investments in non-exchange traded open-end investment company securities. The Exchange represents that investments in other non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund. The Exchange asserts that the criteria of Commentary .01(a)(1) does not need to apply to such securities because the securities must satisfy applicable 1940 Act diversification requirements, and the net asset value of the securities is based on the value of securities and financial assets the investment company holds.[36] The Commission notes that it has previously approved a similar proposal to invest in non-exchange-traded open-end management investment company securities.[37]

Other than as described above, the Fund's portfolio will continue to meet all the requirements of NYSE Arca Rule 8.600–E. The Commission believes that the proposed initial and continued listing requirements are designed to mitigate the potential for manipulation of the Shares, do not raise any novel issues, and are consistent with listing requirements of other Managed Fund Shares.[38]

The Commission finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[39] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. According to the Exchange, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. Further, the Portfolio Indicative Value, as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (defined in NYSE Arca Rule 7.34–E(a)(2)). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, the Fund's website will include a form of prospectus for the Fund and additional data relating to the net asset value (''NAV'') and other applicable quantitative information.

Exchange-traded options quotation and last-sale information for options cleared via the Options Clearing Corporation are available via the Options Price Reporting Authority. Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Price information relating to OTC options and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. For exchange-traded common stocks, preferred stocks, rights, warrants, ETNs and ETFs, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Intraday and other price information for the Fixed Income Securities in which the Fund invests will be available through subscription services, which can be accessed by authorized participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, privately-issued securities, MBS and ABS, to the extent transactions in such securities are reported to TRACE.[40] Shares of money market funds are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities, repurchase agreements, reverse repurchase agreements and cash equivalents generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that it has obtained a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio (as defined in

[31] *See supra* note 25.

[32] *See* Amendment No. 1, *supra* note 4, at 13.

[33] *See* Securities Exchange Act Release Nos. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–NASDAQ–2017–128); 85022 (January 31, 2019), 84 FR 2265 (February 6, 2019) (SR–NASDAQ–2018–080).

[34] *See id.*

[35] *See supra* note 21.

[36] *See* Amendment No. 1, *supra* note 4, at 23–24.

[37] *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Rule 8.600–E).

[38] *See supra* notes 33, 34, and 37.

[39] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[40] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For fixed income securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

NYSE Rule 8.600–E(c)(2)) will be made available to all market participants at the same time.[41] In addition, the Exchange states that on a daily basis, the Fund discloses on its website the Disclosed Portfolio of the Fund that forms the basis for the Fund's NAV calculation.[42] Trading in the Shares also will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of a fund may be halted. Further, trading in the Shares may be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached, because of market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[43]

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[44] Additionally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[45]

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[46] In support of its proposal, the Exchange has made the following representations:

(1) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.[47]

(2) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[48]

(3) The Exchange or FINRA, on behalf of the Exchange, or both, (1) will communicate as needed regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''); and (2) may obtain trading information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities.[49] The Exchange is able to access from FINRA, as needed, trade information for certain Fixed Income Securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.[50]

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[51]

(5) The Fund will be in compliance with Rule 10A–3 under the Act,[52] as provided by NYSE Arca Rule 5.3–E for initial and continued listing of shares.[53]

(6) All statements and representations made in the proposed rule change regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m)–E.[54]

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendments No. 1 and No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act[55] the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[56] that the proposed rule change (SR–NYSEArca-2019–38), as modified by Amendments No. 1 and No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19217 Filed 9–5–19; 8:45 am]

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[41] *See* Amendment No. 1, *supra* note 4, at 20.

[42] *See id.* at 18.

[43] These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. *See id.*

[44] *See id.* at 20.

[45] *See* NYSE Arca Rule 8.600(d)(2)(B)(ii). The term ''Reporting Authority'' is defined in NYSE Arca Rule 8.600(c)(4).

[46] *See* Amendment No. 1, *supra* note 4, at 20.

[47] *See id.*

[48] *See id.*

[49] In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities that are members of the ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* Amendment No. 2, *supra* note 5.

[50] *See id.* at 22.

[51] *See id.* at 20.

[52] 17 CFR 240.10A–3.

[53] *See* Amendment No. 1, *supra* note 4, at 20.

[54] *See id.* at 21.

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78s(b)(2).

[57] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 302, SEC File No. 270–453, OMB Control No. 3235–0510.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 302 (17 CFR 242.302) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 (''Act'') (15 U.S.C. 78a *et seq.*).

Regulation ATS sets forth a regulatory regime for ''alternative trading systems'' (''ATSs''). An entity that meets the definition of an exchange must register, pursuant to Section 5 of the Exchange Act, as a national securities exchange under Section 6 of the Exchange Act [1] or operate pursuant to an appropriate exemption.[2] One of the available exemptions is for ATSs.[3] Exchange Act

[1] *See* 15 U.S.C. 78e and 78f. A ''national securities exchange'' is an exchange registered as such under Section 6 of the Exchange Act.

[2] 15 U.S.C. 78a *et seq.*

[3] Rule 300(a) of Regulation ATS provides that an ATS is ''any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange

Rule 3a1–1(a)(2) exempts from the definition of ''exchange'' under Section 3(a)(1) an organization, association, or group of persons that complies with Regulation ATS.[4] Regulation ATS requires an ATS to, among other things, register as a broker-dealer with the Securities and Exchange Commission (''SEC''), file a Form ATS with the Commission to notice its operations, and establish written safeguards and procedures to protect subscribers' confidential trading information. An ATS that complies with Regulation ATS and operates pursuant to the Rule 3a1–1(a)(2) exemption would not be required by Section 5 to register as a national securities exchange. Rule 302 of Regulation ATS (17 CFR 242.302) describes the recordkeeping requirements for ATSs. Under Rule 302, ATSs are required to make a record of subscribers to the ATS, daily summaries of trading in the ATS, and time-sequenced records of order information in the ATS.

The information required to be collected under Rule 302 should increase the abilities of the Commission, state securities regulatory authorities, and the self-regulatory organizations (''SROs'') to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. If the information is not collected or collected less frequently, the regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

Respondents consist of ATSs that choose to operate pursuant to the exemption provided by Regulation ATS from registration as national securities exchanges. There are currently 83 respondents. These respondents will spend approximately 3,735 hours per year (83 respondents at 45 burden hours/respondent) to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of $73, the resultant total related internal cost of compliance for these respondents is $272,655 per year (3,735 burden hours multiplied by $73/hour).

Compliance with Rule 302 is mandatory. The information required by Rule 302 is available only for the examination of the Commission staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 (''FOIA''), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

ATSs are required to preserve, for at least three years, any records made in the process of complying with the requirements set out in Rule 302.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 3, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19237 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

Act Rule 3b–16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers' trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading.''

[4] *See* 17 CFR 240.3a1–1(a)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86833; File No. SR–NYSEAMER–2019–27]

Self-Regulatory Organizations; NYSE American, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the Options Regulatory Fee

August 30, 2019.

I. Introduction

On July 2, 2019, NYSE American, LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–NYSEAMER–2019–27) to modify the amount of its Options Regulatory Fee (''ORF'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on July 22, 2019.[5] The Commission received one comment letter on the proposal.[6] Pursuant to Section 19(b)(3)(C) of the Act,[7] the Commission is hereby: (1) Temporarily suspending File No. SR–NYSEAMER–2019–27; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–NYSEAMER–2019–27.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the amount of its ORF from $0.0055 to $0.0054 per contract.[8] The Exchange assesses the ORF on American Trading Permit (''ATP'') Holders for all options transactions that are cleared by those firms through the Options Clearing Corporation (''OCC'') in the Customer range, regardless of the exchange on which the transaction occurs.[9] The Exchange noted that its ORF ''is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of ATP Holders.''[10] Noting that it adjusts the ORF amount periodically to ensure that the revenue from ORF does not exceed its regulatory costs, the Exchange proposed to decrease the ORF because ''from 2017 to 2018, options transaction volume increased to a level that if the ORF is not adjusted, the ORF revenue to the Exchange year-over-year

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86391 (July 16, 2019), 84 FR 35165 (July 22, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii). Although the proposed rule change was effective upon filing, the Exchange indicated that it would not implement the fee until August 1, 2019. *See* Notice, *supra* note 3, at 35165.

[5] *See* Notice, *supra* note 3, at 35165.

[6] *See* Letter to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), dated August 27, 2019 (''SIFMA Letter'').

[7] 15 U.S.C. 78s(b)(3)(C).

[8] *See* Notice, *supra* note 3, at 35165.

[9] *See id.* at 35166.

[10] *Id.* at 35165.

could exceed a material portion of the Exchange's regulatory costs.'' [11]

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[12] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[13] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[14] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements'' [15]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [16] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [17] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[18] In justifying its proposal, the Exchange stated in its filing that its proposal ''is reasonable because it would help ensure that revenue collected from the ORF does not exceed a material portion of the Exchange's regulatory costs.'' [19] In determining the amount of the proposed ORF, the Exchange said that it considered: (1) The increase in options transaction volume in 2018, (2) the decrease in options transaction volumes in the first five months of 2019, (3) the Exchange's projection that options transaction volumes will remain stable at best in the future, and (4) the ''estimated projections for [the Exchange's] regulatory costs.'' [20] The Exchange also asserted that the ORF is equitably allocated and not unfairly discriminatory because the fees are imposed on clearing firms, who can then choose to pass through all, a portion, or none of the costs of the ORF to their customers.[21] In addition, the Exchange stated that the regulatory costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the regulatory costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive.[22]

As noted above, the Commission received one comment letter on the proposal, in which the commenter argued that the Exchange has not provided sufficient information to satisfy the statutory requirements under the Act.[23] Specifically, the commenter stated that the Exchange should ''include quantitative data showing anticipated revenues, costs and profitability'' and describe the methodology used for any estimations of baseline and expected costs and revenues to support the Exchange's assertions that the proposed ORF is an equitable allocation of reasonable fees among members.[24] The commenter also stated that the Exchange should provide support for its assertions that assessing ORF only on transactions cleared at OCC in the Customer range represents an equitable allocation that is not unfairly discriminatory.[25] Lastly, the commenter argued that the Exchange should not be permitted to charge ORF for trades occurring on other exchanges unless the Exchange can support its assertion concerning its ''authority to act on activities occurring outside its own market.'' [26]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the proposal to modify the amount of the ORF is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[27]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[28]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [29] and 19(b)(2)(B) of the Act [30] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[31] the Commission is providing

[11] *See id.* at 36166. The Exchange noted that it last changed the ORF in 2014. *See id.*

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[15] *See id.*

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(8).

[19] *See* Notice, *supra* note 3, at 35167.

[20] *See id.*

[21] *See id.*

[22] *See id.*

[23] *See* SIFMA Letter, *supra* note 6, at 1–2.

[24] *See id.* at 2.

[25] *See id.*

[26] *See id.*

[27] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[28] For purposes of temporarily suspending the 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).

[29] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of

notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the *equitable allocation* of *reasonable* dues, fees, and other charges among its members and issuers and other persons using its facilities;'' [32] (emphasis added);
- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit *unfair discrimination* between customers, issuers, brokers, or dealers'' [33] (emphasis added); and
- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [34]

As noted above, the proposal purports to modify the amount of the ORF in response to changes in options transaction volume in a manner that is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of its options participants. However, the Exchange's statements in support of the proposed rule change are general in nature and lack detail and specificity.[35] For example, the Exchange provides only broad information on options transaction volume trends, but does not provide any information on the Exchange's historic or projected options regulatory costs (including the costs of regulating activity that clears in the Customer range and the costs of regulating activity that occurs away from the Exchange), the amount of regulatory revenue it has generated and expects to generate from the ORF as well as other sources, or the ''material portion'' of options regulatory expenses that it seeks to recover from the ORF. Similarly, the Exchange has not provided information to support its assertion that regulating customer activity is ''generally more labor-intensive'' and therefore, more costly.[36]

As the commenter stated, without more information in the filing on the Exchange's regulatory revenues attributable to ORF as well as regulatory revenue from other sources, and more information on the Exchange's regulatory costs to supervise and regulate ATP Holders, including, *e.g.,* Customer versus non-Customer activity and on-exchange versus off-exchange activity, the proposal lacks information that can speak to whether the proposed ORF is reasonable, equitably allocated, and not unfairly discriminatory, particularly given that the ORF is assessed only on transactions that clear in the Customer range and regardless of the exchange on which the transaction occurs, and that the ORF is designed to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of activity across all ATP Holders.[37]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [38] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[39] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[40]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated and not be unfairly discriminatory.[41]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 27, 2019. Rebuttal comments should be submitted by October 11, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[42]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, 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 No. SR–NYSEAMER–2019–27 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 No. SR–NYSEAMER–2019–27. The 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

publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[32] 15 U.S.C. 78f(b)(4).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78f(b)(8).

[35] *See, e.g.,* SIFMA Letter, *supra* note 6, at 2 (arguing that the Exchange has ''not provided enough information . . . to satisfy the Exchange Act standards'').

[36] *See id. See also* SIFMA Letter, *supra* note 6, at 2.

[37] *See* SIFMA Letter, *supra* note 6, at 2.

[38] 17 CFR 201.700(b)(3).

[39] *See id.*

[40] *See id.*

[41] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[42] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 publicly available. All submissions should refer to File No. SR–NYSEAMER–2019–27 and should be submitted on or before September 27, 2019. Rebuttal comments should be submitted by October 11, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[43] that File No. SR–NYSEAMER–2019–27, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19219 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[43] 15 U.S.C. 78s(b)(3)(C).

[44] 17 CFR 200.30–3(a)(57) and (58).

DEPARTMENT OF STATE

[Public Notice: 10862]

60-Day Notice of Proposed Information Collection: Adoptive Family Relief Act Refund Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 5, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2019–0029'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: fees@state.gov.* You must include the DS form number (DS–7781), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Jorge Abudei, who may be reached at 202–485–8915 or at *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Adoptive Family Relief Act Refund Application.
- *OMB Control Number:* 1405–0223.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/C.
- *Form Number:* DS–7781.
- *Respondents:* Immigrant Visa Petitioners.
- *Estimated Number of Respondents:* 20.
- *Estimated Number of Responses:* 20.
- *Average Time per Response:* 5 Minutes.
- *Total Estimated Burden Time:* 1.6 Hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Adoptive Family Relief Act (Pub. L. 114–70) amended Section 221(c) of the Immigration and Nationality Act (INA), 8 U.S.C. 1201(c), to allow for the waiver or refund certain immigrant visa fees for a lawfully adopted child, or a child coming to the United States to be adopted by a United States citizen, subject to criteria prescribed by the Secretary of State. Over 350 American families have successfully adopted children from the Democratic Republic of the Congo. However, since September 25, 2013, they have not been able to bring their adoptive children home to the United States because the Democratic Republic of the Congo suspended the issuance of ''exit permits'' for these children. As the permit suspension drags on, however, American families are repeatedly paying visa renewal and related fees, while also continuing to be separated from their adopted children.

The waiver or refund provides support and relief to American families seeking to bring their adoptive children home to the United States from the Democratic Republic of the Congo and families in situations similar to the one stipulated above. This form collects information to determine the extra fees these families have paid and refund them in accordance with the Adoptive Family Relief Act.

Methodology

The collection will be hosted on the Department of State website to be printed, filled out, and eventually sent to the consular section where the adoption case was originally processed.

Douglass R. Benning,

Deputy Assistant Secretary.

[FR Doc. 2019–19292 Filed 9–5–19; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36343]

Stephens Pioneer Rail LLC—Control Exemption—BRX Transportation Holdings, LLC

Stephens Pioneer Rail LLC (Stephens Pioneer),[1] a noncarrier, filed a verified

[1] Stephens Pioneer states that it is an affiliate of Stephens Capital Partners LLC, which is also a noncarrier.

notice of exemption under 49 CFR 1180.2(d)(2) to authorize its acquisition of a minority membership interest in BRX Transportation Holdings, LLC (BRX Transportation). BRX Transportation, along with Brookhaven Rail Partners, LLC, Related Infrastructure, LLC, and BRX Acquisition Sub, Inc., were previously authorized to acquire control of Pioneer Railcorp (Pioneer), a noncarrier holding company that controls 15 Class III railroad subsidiaries (the Pioneer Railroads). *See Brookhaven Rail Partners, LLC—Control Exemption—Pioneer Railcorp,* FD 36306 (STB served June 21, 2019).

According to Stephens Pioneer, subsequent to the filing of the verified notice in Docket No. FD 36306, Stephens Pioneer became of member of BRX Transportation. Stephens Pioneer states that it believes that its acquisition of a minority equity interest in BRX Transportation would not constitute control as defined in 49 U.S.C. 10102(3). Nevertheless, Stephens Pioneer states that it filed the verified notice in Docket No. 36343 out of an abundance of caution to authorize its acquisition of a minority interest in BRX Transportation, and, indirectly, in Pioneer.[2] Stephens Pioneer further states that, immediately following the closing of the acquisition authorized in Docket No. FD 36306, Stephens Pioneer placed its interest in BRX Transportation into an independent irrevocable voting trust pursuant to the Board's regulations at 49 CFR part 1013.[3]

Attached to the verified notice is an Amended and Restated Limited Liability Company Operating Agreement of BRX Transportation Holdings, LLC, dated as of June 7, 2019, pursuant to which Stephens Pioneer will acquire an interest in BRX Transportation.[4]

The earliest this transaction may be consummated is September 20, 2019, the effective date of the exemption (30 days after the verified notice was filed).

The verified notice states that: (i) Stephens Pioneer does not own or control any rail line that connects with any of the Pioneer Railroads; (ii) the proposed transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by Stephens Pioneer with the Pioneer Railroads, or connect any of the Pioneer Railroads with one another; and (iii) the proposed transaction does not involve a Class I carrier. Therefore, the 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. Because this transaction involves Class III rail carriers only, the Board may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 13, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36343, 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 Stephens Pioneer's representative, David F. Rifkind, Stinson LLP, 1775 Pennsylvania Avenue NW, Suite 800, Washington, DC 20006.

According to Stephens Pioneer, 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)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 3, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–19278 Filed 9–5–19; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board's exemption authority is permissive, and this notice does not constitute a ruling on whether Stephens Pioneer needs authority to control, or following the proposed transaction would control, BRX Transportation, Pioneer, or the Pioneer Railroads.

[3] A copy of the executed voting trust was filed with the verified notice.

[4] A redacted version of the agreement was filed with the verified notice. An unredacted version was filed concurrently under seal, along with Stephens Pioneer's motion for protective order under 49 CFR 1104.14(b). The motion for protective order will be addressed in a separate decision.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2019–0016; Dispute Number WT/DS577]

WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping and Countervailing Duties on Ripe Olives From Spain

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the European Union (EU) has requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). You can find the request at *www.wto.org* in a document designated as WT/DS577/3. USTR invites written comments concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments during the course of the dispute settlement proceedings, you should submit your comment on or before October 7, 2019, to be assured of timely consideration by USTR.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in Section III below. The docket number USTR–2019–0016. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395–9483 before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsel Nicholas Paster at (202) 395–3580 or Assistant General Counsel David Lyons at (202) 395–9446.

SUPPLEMENTARY INFORMATION:

I. Background

Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires notice and opportunity for comment after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Pursuant to this provision, USTR is providing notice that the EU has requested a dispute settlement panel pursuant to the WTO *Understanding on Rules Procedures Governing the Settlement of Disputes* (DSU). The panel established by the WTO will hold its meetings in Geneva, Switzerland.

II. Major Issues Raised by the European Union

On January 29, 2019, the EU requested WTO consultations with the United States concerning the imposition of antidumping and countervailing duties on ripe olives from Spain, following final determinations by the U.S. Department of Commerce (DOC) and U.S. International Trade Commission in *Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination* (DOC investigation number C–469–818), *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value* (DOC investigation number A–469–817), and *Ripe Olives from Spain* (ITC investigation numbers 701–TA–582 and 731–TA–1377), and section 771B of the Tariff Act of 1930 (19 U.S.C. 1677–2). You can find the consultation request at *www.wto.org* in a document designated as WT/DS577/1. On June 24, 2019, at the request of the EU, the WTO established a panel to examine the EU complaint.

The EU's request for establishment of a panel (WT/DS577/3) appears to be concerned with an alleged countervailing of subsidies that are not specific; the DOC's alleged failure to conduct a pass-through analysis with respect to subsidies received by olive growers, and its reliance on Section 771B of the Tariff Act of 1930; the basis for the DOC's calculation of the final subsidy rate of one respondent; and the ITC's injury determination with respect to the volume and effect of subsidized imports. The EU claims that the imposition of duties is inconsistent with Articles VI:1, VI:2, and VI:3 of the WTO *General Agreement on Tariffs and Trade 1994* (GATT 1994); Articles 1.1(a), 1.1(b), 1.2, 2.1, 2.1(a), (b), and (c), 2.2, 2.4, 10, 12.1, 12.5, 12.8, 14, 15.1, 15.2, 15.5, 19.1, 19.3, 19.4, and 32.1 of the WTO *Agreement on Subsidies and Countervailing Measures* (SCM Agreement); and Articles 3.1, 3.2, 3.5, and 12.2.2 of the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Antidumping Agreement). The EU further alleges that Section 771B of the Tariff Act of 1930 is inconsistent with Articles 1.1(b), 10, 14, 19.1, 19.3, 19.4, and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994.

III. Public Comments: Requirements for Submissions

USTR invites written comments concerning the issues raised in this dispute. All submissions must be in English and sent electronically via *www.regulations.gov.* To submit comments via *www.regulations.gov,* enter docket number USTR–2019–0016 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''notice'' under ''document type'' on the left side of the search-results page, and click on the link entitled ''comment now!'' For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on ''How to Use *Regulations.gov*'' on the bottom of the home page.

The *www.regulations.gov* website allows users to provide comments by filling in a ''type comment'' field, or by attaching a document using an ''upload file'' field. USTR prefers that you provide comments in an attached document. If a document is attached, it is sufficient to type ''see attached'' in the ''type comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''type comment'' field.

For any comments submitted electronically that contain business confidential information (BCI), the file name of the business confidential version should begin with the characters ''BC''. Any page containing BCI must clearly be marked ''BUSINESS CONFIDENTIAL'' on the top and bottom of that page, and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that you would not customarily release the information to the public. Filers of submissions containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character ''P''. Follow the ''BC'' and ''P'' with the name of the person or entity submitting the comments or rebuttal comments. For alternatives to online submissions, please contact Sandy McKinzy at (202) 395–9483 before transmitting a comment and in advance of the relevant deadline.

USTR may determine that information or advice contained in a comment, other than BCI, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a public docket on this dispute settlement proceeding, docket number USTR–2019–0016, which is accessible at *www.regulations.gov.* The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, USTR will make the following documents publicly available at *www.ustr.gov:* The U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, also will be available on the website of the World Trade Organization, at *www.wto.org.*

Juan Millan

Assistant United States Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.

[FR Doc. 2019–19230 Filed 9–5–19; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: This notice announces a meeting of the ARAC.

DATES: The meeting will be held on Thursday, September 19, 2019, from 1:00 p.m. to 3:00 p.m. Eastern Standard Time.

Requests for accommodations to a disability must be received by Friday, September 6, 2019.

Requests to speak during the meeting must submit a written copy of their remarks to the Designated Federal Officer (DFO) by Friday, September 6, 2019.

Requests to submit written materials to be reviewed during the meeting must be received no later than Friday, September 6, 2019.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Copies of the meeting minutes will be available on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.* Any committee related request should be sent to the person listed in the following section.

FOR FURTHER INFORMATION CONTACT: Lakisha Pearson, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–4191; fax (202) 267–5075; email *9-awa-arac@faa.gov.* Also, visit the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.*

SUPPLEMENTARY INFORMATION:

I. Background

The ARAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide advice and recommendations to the FAA concerning rulemaking activities, such as aircraft operations, airman and air agency certification, airworthiness standards and certification, airports, maintenance, noise, and training.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Status Report from the FAA
- Status Updates:
  - Active Working Groups
  - Transport Airplane and Engine (TAE) Subcommittee
- Recommendation Reports
- Any Other Business

A final agenda will be posted on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public on a first-come, first served basis, as space is limited. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than September 6, 2019. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers are responsible for paying long-distance charges.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

There will be 15 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA Office of Rulemaking may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to ARAC members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

Issued in Washington, DC, on September 3, 2019.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

[FR Doc. 2019–19288 Filed 9–4–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Nevada

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final. The actions relate to the proposed highway project for transportation improvements in the Interstate 80 (I–80), Interstate 580 (I–580), United States Highway 395 (US 395) Interchange, and connecting roads in the City of Reno and City of Sparks, Washoe County, Nevada. The I–80/I–580/US 395 Interchange is known locally as the ''Spaghetti Bowl.'' These actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before February 3, 2020. If the Federal law that authorizes judicial review of a claim provides a time-period of less than 150 days for filing such claim, then that shorter time-period still applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Abdelmoez Abdalla, Ph.D., Environmental Program Manager, Federal Highway Administration, 705 North Plaza Street, Carson City, Nevada 89701–0602; telephone: (775) 687–1231; email: *abdelmoez.abdalla@dot.gov.* The FHWA Nevada Division Office's regular business hours are from 7:30 a.m. to 4:00 p.m. (Pacific Time). For the Nevada Department of Transportation (NDOT): Mr. Christopher E. Young, RPA, Acting Chief, Environmental Services Division, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, Nevada 89712; telephone: (775) 888–7686; email: *cyoung@dot.nv.gov.* The NDOT office's regular business hours are from 8:00 a.m. to 5:00 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions related to the Spaghetti Bowl Interchange Project located in Washoe County, Nevada. The FHWA, in cooperation with NDOT, prepared a Draft Environmental Impact Statement (EIS) and combined Final EIS (FEIS)/Record of Decision (ROD) to reconstruct the Spaghetti Bowl Interchange in the cities of Reno and Sparks in Washoe County, Nevada. The proposed project will improve the Spaghetti Bowl and major street connections on I–580/US 395 from Meadowood Mall Way Drive on the south to Parr Avenue/Dandini Boulevard on the north and I–80 from Keystone Avenue on the west to Pyramid Way on the east. The study includes approximately 7.3 miles of I–580/US 395 and 4.3 miles of I–80. The project will improve the operations,

capacity, and safety of the interchange while addressing all modes of travel as appropriate. Regionally, I–80 connects San Francisco, Sacramento, Reno, and Salt Lake City. I–580 links Carson City with Reno, and US 395 serves as an important regional route.

The actions taken by the Federal agencies on this project, and laws under which such actions were taken, are described in the combined ROD/FEIS, issued on July 30, 2019, and in other documents in the FHWA or NDOT project records. The combined ROD/FEIS, and other project records are available by contacting FHWA or NDOT at the addresses provided above. The combined ROD/FEIS can also be viewed on the project website at: *https://ndotspaghettibowl.com/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 as amended by the Fast Act Section 1404(a) (Pub. L. 114–94) and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)] (Transportation Conformity, 40 CFR part 93).

3. *Noise:* Procedures for Abatement of Highway Traffic Noise and Construction Noise [23 U.S.C. 109(h), 109(i); 42 U.S.C. 4331, 4332; sec. 339(b), Public Law 104–59, 109 Stat. 568, 605; 49 CFR 1.48(b); 23 CFR 772].

4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303] and Section 6(f) of the Land and Water Conservation Act as amended [16 U.S.C. 4601]; 23 CFR 774.

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C 306108]; Archeological and Historic Preservation Act of 1974 [16 U.S.C. 469–469(c)].

6. *Wildlife:* Endangered Species Act of 1973 [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*], as amended; Americans with Disabilities Act [42 U.S.C. 12101]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 4601 *et seq.,* as amended by the Uniform Relocation Act Amendments of 1987 [Pub. L. 100–17].

8. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 408, Section 401, Section 319) [33 U.S.C. 1251 *et seq.*]; Safe Drinking Water Act [42 U.S.C. 300f *et seq.*]. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended [42 U.S.C. 9601 *et seq.*]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901 *et. seq.*].

9. *Executive Orders:* E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management, as amended by E.O. 12148 and E.O. 13690; E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 11514, Protection and Enhancement of Environmental Quality; E.O. 13112, Invasive Species.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1), as amended by the Moving Ahead for Progress Act, Pub. L. 112–141, section 1308, 126 Stat. 405 (2012).

Issued on: August 27, 2019.

Susan Klekar,

Division Administrator, Carson City, Nevada.

[FR Doc. 2019–19106 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117; FMCSA–2016–0008; FMCSA–2017–0178]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 14 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before October 7, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117; FMCSA–2016–0008; FMCSA–2017–0178 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–

2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117; FMCSA–2016–0008; FMCSA–2017–0178), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117; FMCSA–2016–0008; FMCSA–2017–0178, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117; FMCSA–2016–0008; FMCSA–2017–0178, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria[1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 14 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 14 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 14 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of August and are discussed below.

As of August 1, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers: Donnie Kuck (MT); Tye Moore (IN); and Rickie Rineer (PA).

The drivers were included in docket numbers FMCSA–2017–0178 and FMCSA–2016–0008. Their exemptions are applicable as of August 1, 2019, and will expire on August 1, 2021.

As of August 13, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Eric Barnwell (MI)
John Boerth (WI)

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Don Darbyshire (IA)
Todd Davis (WI)
Daniel Dellaserra (CA)
Charles Gray (OK)
Eric Hilmer (WI)
David Kietzman (WI)
Dennis Klamm (MN)
William Rainer, III (TX)
Brian Wiggins (ID)

The drivers were included in docket number FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117. Their exemptions are applicable as of August 13, 2019, and will expire on August 13, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the 14 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19264 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–2001–9561; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2004–19477; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2006–24783; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2008–0292; FMCSA–2009–0086; FMCSA–2009–0154; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2014–0011; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0033; FMCSA–2016–0213; FMCSA–2017–0017; FMCSA–2017–0020; FMCSA–2017–0022]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 104 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before October 7, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1998–4334, Docket No. FMCSA–1999–5578, Docket No. FMCSA–2001–9561, Docket No. FMCSA–2003–14504, Docket No. FMCSA–2003–15268, Docket No. FMCSA–2004–19477, Docket No. FMCSA–2005–20560, Docket No. FMCSA–2005–21254, Docket No. FMCSA–2006–24783, Docket No. FMCSA–2006–26066, Docket No. FMCSA–2007–27333, Docket No. FMCSA–2007–27515, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2007–28695, Docket No. FMCSA–2008–0292, Docket No. FMCSA–2009–0086, Docket No. FMCSA–2009–0154, Docket No. FMCSA–2010–0354, Docket No. FMCSA–2011–0010, Docket No. FMCSA–2011–0057, Docket No. FMCSA–2011–0092, Docket No. FMCSA–2011–0102, Docket No. FMCSA–2011–0124, Docket No. FMCSA–2011–0140, Docket No. FMCSA–2011–0141, Docket No. FMCSA–2012–0338, Docket No. FMCSA–2013–0021, Docket No. FMCSA–2013–0025, Docket No. FMCSA–2013–0027, Docket No. FMCSA–2013–0028, Docket No. FMCSA–2013–0029, Docket No. FMCSA–2013–0030, Docket No. FMCSA–2014–0011, Docket No. FMCSA–2014–0305, Docket No. FMCSA–2015–0048, Docket No. FMCSA–2015–0052, Docket No. FMCSA–2015–0053, Docket No. FMCSA–2015–0055, Docket No. FMCSA–2016–0033, Docket No. FMCSA–2016–0213, Docket No. FMCSA–2017–0017, Docket No. FMCSA–2017–0020; or Docket No. FMCSA–2017–0022 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
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FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting

material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

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FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

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C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 104 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent

with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 104 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 63 FR 66226; 64 FR 16517; 64 FR 27027; 64 FR 51568; 66 FR 30502; 66 FR 41654; 66 FR 41656; 66 FR 48504; 68 FR 19598; 68 FR 33570; 68 FR 37197; 68 FR 44837; 68 FR 48989; 68 FR 54775; 69 FR 64806; 70 FR 2705; 70 FR 17504; 70 FR 25878; 70 FR 30997; 70 FR 30999; 70 FR 41811; 70 FR 42615; 70 FR 46567; 70 FR 53412; 71 FR 32183; 71 FR 41310; 71 FR 63379; 72 FR 1051; 72 FR 5489; 72 FR 12666; 72 FR 21313; 72 FR 25831; 72 FR 27624; 72 FR 28093; 72 FR 32703; 72 FR 39879; 72 FR 40360; 72 FR 40362; 72 FR 46261; 72 FR 52419; 72 FR 54972; 72 FR 62896; 73 FR 61922; 73 FR 61925; 73 FR 74565; 73 FR 78423; 74 FR 15586; 74 FR 19267; 74 FR 19270; 74 FR 20523; 74 FR 23472; 74 FR 26464; 74 FR 28094; 74 FR 34394; 74 FR 34395; 74 FR 34632; 74 FR 37295; 74 FR 41971; 74 FR 43221; 74 FR 43223; 74 FR 48343; 75 FR 72863; 75 FR 77949; 75 FR 79083; 76 FR 2190; 76 FR 9856; 76 FR 17483; 76 FR 18824; 76 FR 20076; 76 FR 21796; 76 FR 25762; 76 FR 25766; 76 FR 29022; 76 FR 29024; 76 FR 32017; 76 FR 34135; 76 FR 34136; 76 FR 37169; 76 FR 37885; 76 FR 40445; 76 FR 44082; 76 FR 44652; 76 FR 49531; 76 FR 50318; 76 FR 53708; 76 FR 53710; 76 FR 54530; 76 FR 55463; 76 FR 55469; 77 FR 68202; 77 FR 74273; 77 FR 74731; 77 FR 74734; 78 FR 10251; 78 FR 12811; 78 FR 16762; 78 FR 20376; 78 FR 20379; 78 FR 22596; 78 FR 24300; 78 FR 24798; 78 FR 26106; 78 FR 27281; 78 FR 32708; 78 FR 34140; 78 FR 34141; 78 FR 34143; 78 FR 37270; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 51268; 78 FR 52602; 78 FR 56986; 78 FR 56993; 78 FR 78477; 79 FR 4531; 79 FR 24298; 79 FR 56099; 79 FR 65759; 79 FR 70928; 79 FR 73686; 79 FR 73687; 80 FR 15863; 80 FR 16502; 80 FR 18696; 80 FR 22773; 80 FR 26139; 80 FR 26320; 80 FR 29149; 80 FR 29154; 80 FR 31640; 80 FR 33007; 80 FR 33009; 80 FR 35699; 80 FR 36395; 80 FR 36398; 80 FR 37718; 80 FR 40122; 80 FR 44185; 80 FR 44188; 80 FR 45573; 80 FR 48402; 80 FR 48404; 80 FR 48409; 80 FR 48411; 80 FR 49302; 80 FR 50915; 80 FR 50917; 80 FR 53383; 80 FR 62161; 80 FR 62163; 81 FR 59266; 81 FR 96165; 82 FR 13187; 82 FR 15277; 82 FR 18949; 82 FR 20962; 82 FR 22379; 82 FR 23712; 82 FR 32919; 82 FR 33542; 82 FR 34564; 82 FR 37499; 82 FR 37504; 82 FR 47269; 82 FR 47309; 83 FR 4537). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of September and are discussed below. As of September 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 49 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 30502; 66 FR 41654; 68 FR 37197; 68 FR 44837; 68 FR 48989; 69 FR 64806; 70 FR 2705; 70 FR 17504; 70 FR 30997; 70 FR 41811; 70 FR 42615; 71 FR 32183; 71 FR 41310; 71 FR 63379; 72 FR 1051; 72 FR 5489; 72 FR 12666; 72 FR 21313; 72 FR 25831; 72 FR 27624; 72 FR 32703; 72 FR 40360; 72 FR 40362; 73 FR 61922; 73 FR 61925; 73 FR 74565; 73 FR 78423; 74 FR 15586; 74 FR 19267; 74 FR 19270; 74 FR 23472; 74 FR 26464; 74 FR 28094; 74 FR 34395; 74 FR 34632; 75 FR 72863; 75 FR 77949; 75 FR 79083; 76 FR 2190; 76 FR 9856; 76 FR 17483; 76 FR 18824; 76 FR 20076; 76 FR 21796; 76 FR 25762; 76 FR 25766; 76 FR 29022; 76 FR 29024; 76 FR 32017; 76 FR 34135; 76 FR 37169; 76 FR 37885; 76 FR 44082; 76 FR 44652; 76 FR 49531; 76 FR 50318; 77 FR 68202; 77 FR 74273; 77 FR 74731; 77 FR 74734; 78 FR 10251; 78 FR 12811; 78 FR 16762; 78 FR 20376; 78 FR 20379; 78 FR 22596; 78 FR 24300; 78 FR 24798; 78 FR 26106; 78 FR 27281; 78 FR 32708; 78 FR 34140; 78 FR 34141; 78 FR 34143; 78 FR 37270; 78 FR 41188; 78 FR 46407; 78 FR 51268; 78 FR 52602; 78 FR 56993; 79 FR 4531; 79 FR 24298; 79 FR 56099; 79 FR 65759; 79 FR 70928; 79 FR 73686; 79 FR 73687; 80 FR 15863; 80 FR 16502; 80 FR 18696; 80 FR 22773; 80 FR 26139; 80 FR 26320; 80 FR 29149; 80 FR 29154; 80 FR 31640; 80 FR 33007; 80 FR 33009; 80 FR 35699; 80 FR 36395; 80 FR 36398; 80 FR 37718; 80 FR 40122; 80 FR 44185; 80 FR 44188; 80 FR 45573; 80 FR 48404; 80 FR 48409; 80 FR 50917; 80 FR 62161; 80 FR 62163; 81 FR 59266; 81 FR 96165; 82 FR 13187; 82 FR 15277; 82 FR 18949; 82 FR 20962; 82 FR 22379; 82 FR 23712; 82 FR 32919; 82 FR 33542; 82 FR 34564; 82 FR 37499; 82 FR 47269; 83 FR 4537):

Jimmie L. Blue (MT)
Wilfred J. Brinkman (OH)
Dale E. Bunke (ID)
Ralph H. Bushman (IL)
Roger C. Carson (IN)
Daniel G. Cohen (VT)
Adan Cortes-Juarez (WA)
Jeffrey W. Cotner (OR)
Timothy J. Curran (CA)
Joseph Cuthbert (PA)
Walter C. Dean, Sr. (AL)
John C. Dimassa (WA)
Sonya Duff (IN)
Mark J. Dufresne (NH)
Dennis C. Edler (PA)
Jonathan G. Estabrook (MA)
Eric M. Grayson (KY)
William K. Gullett (KY)
Anthony Hall (LA)
Paul M. Hinkson (TN)
Wesley D. Hogue (AR)
Roy W. Houser II (TN)
John T. Johnson (NM)
Jay D. Labrum (UT)
Anthony Luciano (CT)
Duffy P. Metrejean, Jr. (LA)
Brian P. Millard (SC)
Vincent R. Neville (MN)
Willie L. Nez (UT)
Gonzalo Pena (FL)
Robert D. Porter (CA)
Dennis M. Prevas (WI)
Steven A. Proctor (TX)
William A. Ramirez Vasquez (CA)
Steven P. Richter (MN)
Jonathan C. Rollings (IA)
Salvador Sanchez (CA)
Dennis J. Smith (CO)
Hoyt V. Smith (SC)
Rodney W. Sukalski (MN)
Sukru Tamirci (NY)
Lee T. Taylor (FL)
Michael J. Thane (OH)
Jon C. Thompson (TX)
Larry A. Tidwell (MO)
Harlon C. VanBlaricom (MN)
Richard A. Westfall (OH)
Jeff L. Wheeler (IA)
Tommy N. Whitworth (TX)

The drivers were included in docket numbers FMCSA–2001–9561; FMCSA–2003–15268; FMCSA–2004–19477; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2008–0292; FMCSA–2009–0086; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2011–0140; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2014–0011; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–

2015–0053; FMCSA–2015–0055; FMCSA–2016–0033; FMCSA–2016–0213; FMCSA–2017–0017; FMCSA–2017–0020. Their exemptions are applicable as of September 6, 2019, and will expire on September 6, 2021.

As of September 7, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 34136; 76 FR 37169; 76 FR 50318; 76 FR 55463; 78 FR 78477; 80 FR 50915; 83 FR 4537):

Charles E. Carter (MI); James A. Ellis (NY); and Peter M. Shirk (PA)

The drivers were included in docket numbers FMCSA–2011–0124; FMCSA–2011–0140. Their exemptions are applicable as of September 7, 2019, and will expire on September 7, 2021.

As of September 12, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 37501; 82 FR 47309):

Eddie S. Bennett (MI)
David A. Cooper (WV)
Nicholas M. Deschepper (SD)
John F. Ferguson (PA)
Dominick P. Fittipaldi (PA)
Louis R. LeMonds (WA)
Jonathan Marin (NJ)
Mark E. McNaughton (IA)
Louis Neofotistos (MA)
James R. Rupert (CA)
Christopher J. Schmidt (WI)
Greg C. Stilson (WY)
Eloy Zuniga (TX)

The drivers were included in docket number FMCSA–2017–0022. Their exemptions are applicable as of September 12, 2019, and will expire on September 12, 2021.

As of September 13, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 44837; 70 FR 41811; 72 FR 39879; 72 FR 40362; 72 FR 52419; 74 FR 41971; 76 FR 54530; 78 FR 78477; 80 FR 48402; 83 FR 4537):

John A. Bridges (GA)
Brian W. Curtis (IL)
Tomie L. Estes (MO)
Ray C. Johnson (AR)
James J. Mitchell (NC)
Joshua R. Perkins (ID)
Craig R. Saari (MN)
Jerry L. Schroder (IL)

The drivers were included in docket numbers FMCSA–1998–4334; FMCSA–2007–27897. Their exemptions are applicable as of September 13, 2019, and will expire on September 13, 2021.

As of September 16, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 27281; 78 FR 34143; 78 FR 41188; 78 FR 41975; 78 FR 52602; 78 FR 56986; 80 FR 48411; 83 FR 4537):

Carl Block (NY)
Christopher Brim (TN)
Phyllis Dodson (IN)
Juan M. Guerrero (TX)
Berl C. Jennings (VA)
Vincent Marsee, Sr. (NC)
David Snellings (MD)

The drivers were included in docket numbers FMCSA–2013–0030; FMCSA–2013–0028; FMCSA–2013–0029. Their exemptions are applicable as of September 16, 2019, and will expire on September 16, 2021.

As of September 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 19598; 68 FR 33570; 70 FR 17504; 70 FR 25878; 70 FR 30997; 72 FR 28093; 72 FR 40362; 74 FR 20523; 74 FR 34394; 74 FR 37295; 74 FR 48343; 76 FR 34136; 76 FR 53708; 76 FR 54530; 76 FR 55463; 78 FR 78477; 80 FR 49302; 83 FR 4537):

Michael K. Adams (OH)
Eleazar R. Balli (TX)
Darrell W. Bayless (TX)
Clifford D. Carpenter (MO)
Cecil A. Evey (ID)
Kamal A. Gaddah (OH)
Eric M. Kousgaard (NE)
Samuel A. Miller (IN)
Larry T. Rogers (IL)
Marcial Soto-Rivas (OR)
Boyd D. Stamey (NC)
David C. Sybesma (ID)
Matthew K. Tucker (MN)

The drivers were included in docket numbers FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2009–0154; FMCSA–2011–0124. Their exemptions are applicable as of September 22, 2019, and will expire on September 22, 2021.

As of September 23, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 19598; 68 FR 33570; 68 FR 37197; 68 FR 48989; 68 FR 54775; 70 FR 30999; 70 FR 42615; 70 FR 46567; 70 FR 53412; 72 FR 39879; 72 FR 52419; 72 FR 62896; 74 FR 43221; 76 FR 53708; 78 FR 78477; 80 FR 53383; 83 FR 4537):

Linda L. Billings (NV)
Weldon R. Evans (OH)
Orasio Garcia (TX)
Leslie W. Good (OR)
James P. Guth (PA)
Gregory K. Lilly (WV)
Kenneth A. Reddick (PA)
Leonard Rice, Jr. (GA)
James T. Sullivan (KY)

The drivers were included in docket numbers FMCSA–1999–5578; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2005–21254; FMCSA–2007–27897. Their exemptions are applicable as of September 23, 2019, and will expire on September 23, 2021.

As of September 27, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (72 FR 46261; 72 FR 54972; 74 FR 43223; 76 FR 40445; 76 FR 53710; 76 FR 55469; 78 FR 78477; 83 FR 4537):

Joe M. Flores (NM); and Kenneth D. Perkins (NC)

The drivers were included in docket numbers FMCSA–2007–28695; FMCSA–2011–0141. Their exemptions are applicable as of September 27, 2019, and will expire on September 27, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the

exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 104 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19266 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0034]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from six individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before October 7, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0034 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0034.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA—*http://www.regulations.gov/docket?D=FMCSA-2019-0034*), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0034.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0034* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The six individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if

that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Taylor D. Bonvillain

Mr. Bonvillain is a 25 year-old class R driver in Mississippi. He has a history of epilepsy and has been seizure free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since 2015. His physician states that she is supportive of Mr. Bonvillain receiving an exemption.

James Klucas

Mr. Klucas is a 50 year-old class A CDL holder in Kansas. He has a history of a epilepsy and has been seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since 2017. His physician states that he is supportive of Mr. Klucas receiving an exemption.

Larry Lintelman

Mr. Lintelman is a 53 year-old class A CDL holder in Alaska. He has a history of a seizure disorder and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since 1997. His physician states that he is supportive of Mr. Lintelman receiving an exemption.

Charles Mershon

Mr. Mershon is a 30 year-old class D driver in Minnesota. He has a history of epilepsy and has been seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since October 2010. His physician states that he is supportive of Mr. Mershon receiving an exemption.

Brian Ranger

Mr. Ranger is a 31 year-old class A CDL holder in Nevada. He has a history of seizure disorder and has been seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since 2009. His physician states that he is supportive of Mr. Ranger receiving an exemption.

Adam Wilson

Mr. Wilson is a 35 year-old class D driver in Minnesota. He has a history of seizure disorder and has been seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. His physician states that he is supportive of Mr. Wilson receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19265 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0386]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 2 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 12, 2019. The exemptions expire on September 12, 2021.

Comments must be received on or before October 7, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0386, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2014-0386.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0386), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0386.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0386* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 2 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 2 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 2 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption. As of September 12, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 2 individuals have satisfied the renewal

conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Eduwin Pineiro (NJ); and Casey Wayne Patrick (WA).

The drivers were included in docket number FMCSA–2014–0386. Their exemptions are applicable as of September 12, 2019 and will expire on September 12, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 2 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19263 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0011]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 13 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on August 15, 2019. The exemptions expire on August 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0011* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

II. Background

On July 15, 2019, FMCSA published a notice announcing receipt of applications from 13 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 33801). The public comment period ended on August 14, 2019, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received two comments in this proceeding. Linda Domenosky submitted a comment requesting an application for an exemption from the vision requirements in § 391.41(b)(10). FMCSA has contacted Ms. Domenosky to provide the necessary application material.

Vicky Johnson submitted a comment stating that the Minnesota Department of Public Safety has no objections to the decision to grant an exemption to Rodney E. Mattson.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum

duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 15, 2019, **Federal Register** notice (84 FR 33801) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 13 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, aphakia, complete loss of vision, macular hole, macular scar, optic nerve pallor, prosthesis, and retinal detachment. In most cases, their eye conditions did not develop recently. Eight of the applicants were either born with their vision impairments or have had them since childhood. The five individuals that developed their vision conditions as adults have had them for a range of 3 to 30 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 3 to 104 years. In the past three years, one driver was involved in a crash, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 13 exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Shawn T. Cobbs (MD)
John H.L. Crews (UT)
Paul T. Fisher (MA)
Kevin S. Haas (PA)
Ricky L. Kilpatrick (OK)
Rodney E. Mattson (MN)
Jeffrey T. Molosz (IL)
William H. Moore (AL)
Thomas Pizzurro, Jr. (NY)
Glen A. Potts (PA)
Guillermo Rocha, Jr. (CA)
Lawrence A. Sivori (KY)
Sharon H. Waggoner (MO)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19282 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0033]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments; correction.

SUMMARY: In a notice of applications for exemption; request for comments published in the **Federal Register** on August 28, 2019, FMCSA announced receipt of applications from five individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle to drive in interstate commerce. The notice contained an error in the Addresses and Supplementary Information sections.

DATES: Comments on the August 28, 2019, notice must be received on or before September 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, Room W64–224,

Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–4001; *fmcsamedical@dot.gov.*

SUPPLEMENTARY INFORMATION: The August 28, 2019 (84 FR 45205), notice seeking public comment on the applications from five individuals, is corrected as follows:

1. On page 45205, in the first column, the docket number reference ''FMCSA–2019–0333'' is corrected to read ''FMCSA–2019–0033.''
2. On page 45205, in the second column, the docket number reference ''FMCSA–2019–0333'' is corrected to read ''FMCSA–2019–0033.''
3. On page 45205, in the third column, the docket number reference ''FMCSA–2019–0333'' is corrected to read ''FMCSA–2019–0033.''

Issued under authority delegated in 49 CFR 1.87 on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19284 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0009]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 12 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on June 22, 2019. The exemptions expire on June 22, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0009* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On May 22, 2019, FMCSA published a notice announcing receipt of applications from 14 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 23629). The public comment period ended on June 21, 2019, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to 12 out of 14 of these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Robert Welsch stated that the FMCSA should update the vision requirement to reflect that individuals who have a combined visual acuity of at least 20/40 and visual acuity of one eye of at least 20/40 are qualified to driver rather than making them apply for an exemption.

Modifications to the Medical Requirements for Commercial Drivers at § 391.41(b)(1–10) are outside the scope of this notice. However, FMCSA has begun actions to update the vision standard at § 391.41(b)(10).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 22, 2019, **Federal Register** notice (84 FR 23629) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 12 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, cataract, chorioretinal scar, macular chorioretinal scars, macular degeneration, optic atrophy, prosthesis, and retinal detachment. In most cases, their eye conditions did not develop recently. Six of the applicants were either born with their vision impairments or have had them since childhood. The six individuals that developed their vision conditions as adults have had them for a range of 4 to 28 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40

corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 3 to 96 years. In the past three years, no drivers were involved in crashes, and no drivers were convicted of moving violations in CMVs. Twelve of the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in 12 of the 14 cases exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. Two applicants, Donald K. Etter (PA) and Victor H. Lopez-Campa (KS), were involved in crashes after the publication of the May 22, 2019 notice. Donald K. Etter (PA) has not yet submitted required documentation about the crash. Victor H. Lopez-Campa (KS) was involved in a CMV crash for which he received a citation and/or contributed. Therefore, FMCSA is unable to conclude that granting an exemption to these individuals is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 14 exemption applications, FMCSA exempts the following 12 drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Cesar Avila (PA)
Scott R. Barber (IL)
Jonathan A. Brown (GA)
Glenn E. Coombes (TX)
John A. DeVos (VT)
Marc Enderson (ND)
Robert R. Enoch (NC)
Juan O. Gonzalez (TX)
Vashion E. Hammond (FL)
John M. Harvey (TX)
Jerry L. Hofer (NM)
Mark A. Schlesselman (OH)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19262 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0109]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 29 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before October 7, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0109 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0109.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET,

Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0109), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0109.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0109* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 29 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Erin Barnes

Ms. Barnes, 28 years-old, holds an operator's license in Oklahoma.

Alicia Batiste

Ms. Batiste, 36 years-old, holds an operator's license in Texas.

Jeremy Benoit

Mr. Benoit, 32 years-old, holds an operator's license in Lousiana.

Kurt Bernabei

Mr. Bernabei, 21 years-old, holds an operator's license in Illinois.

Jessica L. Driver

Ms. Driver, 39 years-old, holds an operator's license in Texas.

Donald P. Dunten

Mr. Dunten, 54 years-old, holds an operator's license in Indiana.

Steven Edwards

Mr. Edwards, 64 years-old, holds an operator's license in Kansas.

Debbie Gaskill

Ms. Gaskill, 50 years-old, holds an operator's license in Georgia.

Steven J. Gandee

Mr. Gandee, 46 years-old, holds an operator's license in Pennsylvania.

Daniel S. Geathers

Mr. Geathers, 32 years-old, holds an operator's license in Virginia.

Gregory A. Hale

Mr. Hale, 59 years-old, holds an operator's license in Arizona.

Richard Harrison

Mr. Harrison, 50 years-old, holds an operator's license in Missouri.

Charles Hine

Mr. Hine, 29 years-old, holds an operator's license in Maryland.

Robert B. Mahan

Mr. Mahan, 57 years-old, holds a class A CDL in Oklahoma.

Michael Penn

Mr. Penn, 55 years-old, holds an operator's license in Indiana.

Ernest Pratt

Mr. Pratt, 47 years-old, holds an operator's license in Pennsylvania.

James R. Quinn

Mr. Quinn, 37 years-old, holds an operator's license in Tennessee.

Matthew Ramirez

Mr. Ramirez, 36 years-old, holds an operator's license in South Carolina.

Steven Robelia

Mr. Robelia, 55 years-old, holds a class A CDL in Wisconsin.

Timothy Roberts

Mr. Roberts, 29 years-old, holds an operator's license in Tennessee.

Willis O. Ryan

Mr. Ryan, 53 years-old, holds a class A CDL in Georgia.

Kerry Stewart

Mr. Stewart, 54 years-old, holds an operator's license in Indiana.

Mark J. Tabangcora

Mr. Tabangcora, 37 years-old, holds an operator's license in California.

Yenter Tu

Mr. Tu, 46 years-old, holds an operator's license in Texas.

Alan Vandermeulen

Mr. Vandermeulen, 89 years-old, holds a class A CDL in Iowa.

Yvon Victor

Mr. Victor, 42 years-old, holds a class A CDL in New Jersey.

Bret E. Wanner

Mr. Wanner, 30 years-old, holds an operator's license in Pennsylvania.

Rodney Warfield

Mr. Warfield, 33 years-old, holds an operator's license in Maryland.

David Whisman

Mr. Whisman, 57 years-old, holds a class A CDL in Georgia.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19255 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0014]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from ten individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before October 7, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0014 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0014.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0014), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0014.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0014* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–

14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The ten individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at *https://www.regulations.gov/docket?D=FMCSA-1998-3637.*

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.[1] The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

[1] A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at *https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf.*

III. Qualifications of Applicants

Alex T. Balk

Mr. Balk, 34, has had optic atrophy in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/2000. Following an examination in 2019, his optometrist stated, ''It is my medical opinion that Mr. Balk has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Balk reported that he has driven straight trucks for 12 years, accumulating 50,400 miles. He holds an operator's license from Arizona. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Brian K. Egbert

Mr. Egbert, 48, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2019, his optometrist stated, ''In my medical opinion, I believe that Mr. Egbert does have adequate and sufficient vision to perform and operate a commercial vehicle.'' Mr. Egbert reported that he has driven straight trucks for 18 years, accumulating 126,000 miles. He holds an operator's license from Missouri. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Joseph M. Morgan

Mr. Morgan, 61, has an enucleated left eye due to a traumatic incident in 2014. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2019, his ophthalmologist stated, ''It is my opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Morgan reported that he has driven tractor-trailer combinations for 45 years, accumulating 4.3 million miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Chris J. Orphan, Jr.

Mr. Orphan, 48, has a prosthetic left eye due to a traumatic incident in 1990. The visual acuity in his right eye is 20/20, and in his left eye is no light perception. Following an examination in 2019, his optometrist stated, ''It is my opinion that Mr. Orphan has sufficient vision to perform the driving tasks required in the operation of a commercial vehicle.'' Mr. Orphan reported that he has driven straight

trucks for four years, accumulating 50,000 miles. He holds an operator's license from South Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Wayne E. Page

Mr. Page, 57, has had amblyopia in the left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2019, his optometrist stated, ''In my medical opinion, as long as he wears his glasses, he has sufficient vision to perform the driving tasks required to operate a CMV.'' Mr. Page reported that he has driven tractor-trailer combinations for 20 years, accumulating 1.6 million miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Joaquin A. Sandoval

Mr. Sandoval, 55, has complete loss of vision in the right eye due to a traumatic incident in 1994. The visual acuity in his right eye is no light perception and in his left eye, 20/15. Following an examination in 2019, his optometrist stated, ''I see him suitable to operate a CDL visually and mentally.'' Mr. Sandoval reported that he has driven tractor-trailer combinations for five years, accumulating 45,000 miles. He holds a Class A CDL from Oregon. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Donald J. Thoel

Mr. Thoel, 58, has aphakia in his left eye due to a traumatic incident in 1983. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2019, his ophthalmologist stated, ''In my opinion Mr. Thoel has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Thoel reported that he has driven straight trucks for 25 years, accumulating 875,000 miles. He holds a Class CA Enhanced CDL from Michigan. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Harold W. Via

Mr. Via, 56, has had a retinal detachment in his right eye since 1976. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2019, his ophthalmologist stated, ''If abiding by applicable regulations, medical opinion suggests that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle since he already does this with an intrastate license.'' Mr. Via reported that he has driven straight trucks for 30 years, accumulating 900,000 miles. He holds a Class B CDL from Virginia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Milton D. Voepel

Mr. Voepel, 66, has had a retinal scar in his left eye since 2006. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2019, his optometrist stated, ''In my medical opinion Milton has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Voepel reported that he has driven straight trucks for four years, accumulating 68,000 miles, and tractor-trailer combinations for 14 years, accumulating 1.82 million miles. He holds a Class A CDL from Missouri. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Andrew L. Walker

Mr. Walker, 37, has chorioretinal scarring in his right eye due to retinal detachment in 2004. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''It is my opinion based on examination findings that Mr. Andrew Walker is safe to operate a commercial vehicle as in my judgement his vision is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Walker reported that he has driven straight trucks for 16 years, accumulating 1.44 million miles, and tractor-trailer combinations for 15 years, accumulating 1.8 million miles. He holds a Class A CDL from Minnesota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19281 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2007–25246; FMCSA–2007–27897; FMCSA–2008–0266; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2010–0327; FMCSA–2010–0385; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2014–0302; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0212; FMCSA–2016–0214; FMCSA–2017–0016; FMCSA–2017–0018; FMCSA–2017–0019; FMCSA–2017–0020; FMCSA–2017–0023]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 95 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before October 7, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2001–9561, FMCSA–2003–15892, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2007–25246, FMCSA–2007–27897, FMCSA–2008–0266, FMCSA–2009–0121, FMCSA–2009–0154, FMCSA–2010–0327, FMCSA–2010–0385, FMCSA–2011–0024, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–

2013–0026, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0302, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0055, FMCSA–2016–0212, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, or FMCSA–2017–0023 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2001–9561, FMCSA–2003–15892, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2007–25246, FMCSA–2007–27897, FMCSA–2008–0266, FMCSA–2009–0121, FMCSA–2009–0154, FMCSA–2010–0327, FMCSA–2010–0385, FMCSA–2011–0024, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2013–0026, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0302, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0055, FMCSA–2016–0212, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, or FMCSA–2017–0023), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2001–9561, FMCSA–2003–15892, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2007–25246, FMCSA–2007–27897, FMCSA–2008–0266, FMCSA–2009–0121, FMCSA–2009–0154, FMCSA–2010–0327, FMCSA–2010–0385, FMCSA–2011–0024, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2013–0026, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0302, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0055, FMCSA–2016–0212, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, or FMCSA–2017–0023, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2001–9561, FMCSA–2003–15892, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2007–25246, FMCSA–2007–27897, FMCSA–2008–0266, FMCSA–2009–0121, FMCSA–2009–0154, FMCSA–2010–0327, FMCSA–2010–0385, FMCSA–2011–0024, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2013–0026, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0302, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0055, FMCSA–2016–0212, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, or FMCSA–2017–0023, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of

at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 95 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 95 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 66 FR 30502; 66 FR 41654; 68 FR 44837; 68 FR 52811; 68 FR 61860; 70 FR 17504; 70 FR 30997; 70 FR 30999; 70 FR 41811; 70 FR 46567; 70 FR 48797; 70 FR 61165; 70 FR 61493; 72 FR 180; 72 FR 9397; 72 FR 27624; 72 FR 39879; 72 FR 40359; 72 FR 40362; 72 FR 52419; 72 FR 54971; 73 FR 51689; 73 FR 63047; 74 FR 23472; 74 FR 26461; 74 FR 34074; 74 FR 34395; 74 FR 34630; 74 FR 37295; 74 FR 41971; 74 FR 48343; 74 FR 49069; 74 FR 53581; 75 FR 65057; 75 FR 66423; 75 FR 77492; 75 FR 79081; 76 FR 5425; 76 FR 17481; 76 FR 25766; 76 FR 28125; 76 FR 32017; 76 FR 34136; 76 FR 37169; 76 FR 37885; 76 FR 44652; 76 FR 44653; 76 FR 49528; 76 FR 50318; 76 FR 53708; 76 FR 54530; 76 FR 55463; 76 FR 55465; 76 FR 61143; 76 FR 62143; 76 FR 64171; 76 FR 67246; 77 FR 70537; 78 FR 800; 78 FR 4531; 78 FR 14410; 78 FR 22598; 78 FR 24300; 78 FR 24798; 78 FR 32708; 78 FR 34143; 78 FR 37270; 78 FR 37274; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 56993; 78 FR 63307; 78 FR 68137; 78 FR 77782; 78 FR 78477; 79 FR 4531; 79 FR 53708; 80 FR 12248; 80 FR 15863; 80 FR 26139; 80 FR 29152; 80 FR 29154; 80 FR 31635; 80 FR 31636; 80 FR 35699; 80 FR 36395; 80 FR 37718; 80 FR 40122; 80 FR 41547; 80 FR 41548; 80 FR 44188; 80 FR 48402; 80 FR 48404; 80 FR 48409; 80 FR 48411; 80 FR 48413; 80 FR 49302; 80 FR 50915; 80 FR 50917; 80 FR 59225; 80 FR 62161; 80 FR 62163; 81 FR 86063; 81 FR 96165; 82 FR 12678; 82 FR 12683; 82 FR 15277; 82 FR 18949; 82 FR 18954; 82 FR 22379; 82 FR 24430; 82 FR 28734; 82 FR 33542; 82 FR 34564; 82 FR 35043; 82 FR 35050; 82 FR 43647; 82 FR 47295; 82 FR 47296; 82 FR 47312; 83 FR 2289; 83 FR 4537). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of October and are discussed below. As of October 3, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 58 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 30502; 66 FR 41654; 68 FR 44837; 70 FR 17504; 70 FR 30997; 70 FR 30999; 70 FR 41811; 70 FR 46567; 72 FR 180; 72 FR 9397; 72 FR 27624; 72 FR 39879; 72 FR 40359; 72 FR 40362; 72 FR 52419; 73 FR 51689; 73 FR 63047; 74 FR 23472; 74 FR 26461; 74 FR 34074; 74 FR 34395; 74 FR 34630; 74 FR 37295; 74 FR 41971; 74 FR 48343; 75 FR 65057; 75 FR 66423; 75 FR 77492; 75 FR 79081; 76 FR 5425; 76 FR 17481; 76 FR 25766; 76 FR 28125; 76 FR 32017; 76 FR 34136; 76 FR 37169; 76 FR 37885; 76 FR 44652; 76 FR 44653; 76 FR 49528; 76 FR 50318; 76 FR 53708; 76 FR 54530; 76 FR 55463; 76 FR 61143; 77 FR 70537; 78 FR 800; 78 FR 4531; 78 FR 14410; 78 FR 22598; 78 FR 24300; 78 FR 24798; 78 FR 32708; 78 FR 34143; 78 FR 37270; 78 FR 37274; 78 FR 41975; 78 FR 46407; 78 FR 52602; 78 FR 56986; 78 FR 56993; 78 FR 77782; 78 FR 78477; 79 FR 4531; 79 FR 53708; 80 FR 12248; 80 FR 15863; 80 FR 26139; 80 FR 29152; 80 FR 29154; 80 FR 31635; 80 FR 31636; 80 FR 35699; 80 FR 36395; 80 FR 37718; 80 FR 40122; 80 FR 41547; 80 FR 41548; 80 FR 44188; 80 FR 48402; 80 FR 48404; 80 FR 48409; 80 FR 48411; 80 FR 48413; 80 FR 49302; 80 FR 50915; 80 FR 50917; 80 FR 59225; 80 FR 62161; 80 FR 62163; 81 FR 86063; 81 FR 96165; 82 FR 12678; 82 FR 12683; 82 FR 15277; 82 FR 18949; 82 FR 18954; 82 FR 22379; 82 FR 24430; 82 FR 28734; 82 FR 33542; 82 FR 34564; 82 FR 35043; 82 FR 35050; 82 FR 47295; 82 FR 47296; 82 FR 47312; 83 FR 4537):

Michael T. Allen (NV)
Joel D. Barchard (MA)
Rocky B. Bentz (WI)
Johnny A. Bingham (NC)
Keith A. Bliss (NY)
Fred Boggs (WV)
Michael W. Britt (MD)
Harry S. Bumps (VT)
Shaun E. Burnett (IA)
Kevin W. Cannon (TX)
Juan R. Cano (TX)
Todd A. Chapman (NC)
Larry O. Cheek (CA)
Thomas W. Crouch (IN)
Erik R. Davis (GA)
David S. Devine (ID)
Sean J. Dornin (PA)
Verlin L. Driskell (NE)
Robin C. Duckett (SC)
Bobby C. Floyd (TN)
Steven G. Garrett (CA)
Steven A. Garrity (MA)
Mark E. Gessner (FL)
Dale L. Giardine (PA)
David B. Ginther (PA)
Mark A. Grenier (CT)
Willard D. Hall (CA)
David A. Hayes (GA)
Steven C. Holland (OK)
Rufus L. Jones (NJ)
Udum Khamsoksavath (WA)
Bruce A. Lloyd (MA)
Alex P. Makhanov (WA)
Michael L. Martin (OH)
Dean A. Maystead (MI)
Lawrence McGowan (OH)
David McKinney (OR)
Dionicio Mendoza (TX)
William F. Nickel, V (OR)
Jason C. Nicklow (PA)
Russell W. Nutter (OH)
Gary A. Oster (OR)
Richard E. Perry (CA)
Nathan Pettis (FL)
Mark A. Pirl (NC)
Jason W. Rupp (PA)
Kirby R. Sands (IA)
Bobby Sawyers (PA)
Calvin J. Schaap (MN)
Ernesto Silva (NM)
Larry D. Steiner (MN)
Steven W. Stull (IL)
Terrance W. Temple (OH)
James L. Tinsley, Jr. (VA)

John Vanek (MO)
Victor H. Vera (TX)
Stephen W. Verrette (MI)
Daniel E. Watkins (FL)

The drivers were included in docket numbers FMCSA–2001–9561; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2007–25246; FMCSA–2007–27897; FMCSA–2008–0266; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2010–0327; FMCSA–2010–0385; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2014–0302; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0212; FMCSA–2016–0214; FMCSA–2017–0016; FMCSA–2017–0018; FMCSA–2017–0019; and FMCSA–2017–0020. Their exemptions are applicable as of October 3, 2019, and will expire on October 3, 2021.

As of October 19, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 15 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 43647; 83 FR 2289):

Paul A. Bartels (WI)
Charles C. Berns (IA)
Jeremiah E. Casey (MO)
Leonard M. Cassieri (CA)
Jimmie E. Curtis (NM)
Jonathan P. Edwards (PA)
James A. Green (IL)
Richard Healy (MD)
Stephen M. Lovell (TX)
Carlos Marquez (WI)
Jason L. McBride (MI)
Dennis M. Olson (WI)
Daniel C. Sagert (WI)
Robert D. Steele (WA)
Daniel D. Woodworth (FL)

The drivers were included in docket number FMCSA–2017–0023. Their exemptions are applicable as of October 19, 2019, and will expire on October 19, 2021.

As of October 23, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 47818; 78 FR 63307; 80 FR 59225; 82 FR 47312):

Larry E. Blakely (GA)
Arlene S. Kent (NH)
Willie L. Murphy (IN)
Joseph J. Pudlik (IL)
Jeffrey R. Swett (SC)
Brian C. Tate (VA)

The drivers were included in docket number FMCSA–2013–0165. Their exemptions are applicable as of October 23, 2019, and will expire on October 23, 2021.

As of October 24, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 30502; 66 FR 41654; 68 FR 44837; 70 FR 30999; 70 FR 41811; 70 FR 46567; 70 FR 48797; 70 FR 61493; 72 FR 40359; 72 FR 54971; 74 FR 34074; 74 FR 49069; 76 FR 62143; 78 FR 77782; 80 FR 59225; 82 FR 47312):

Andrew B. Clayton (TN)
William P. Doolittle (MO)
Jonathan M. Gentry (TN)
Benny D. Hatton, Jr. (NY)
Robert W. Healey, Jr. (NJ)
Thomas W. Markham (MN)
Kevin L. Moody (OH)
John C. Young (VA)

The drivers were included in docket numbers FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2005–21711. Their exemptions are applicable as of October 24, 2019, and will expire on October 24, 2021.

As of October 30, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 52811; 68 FR 61860; 70 FR 61165; 74 FR 53581; 76 FR 64171; 78 FR 68137; 80 FR 59225; 82 FR 47312):

Dewayne E. Harms (IL)
Jesse L. Townsend (LA)
James A. Welch (NH)
Michael E. Yount (ID)

The drivers were included in docket number FMCSA–2003–15892. Their exemptions are applicable as of October 30, 2019, and will expire on October 30, 2021.

As of October 31, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 55465; 76 FR 67246; 78 FR 77782; 80 FR 59225; 82 FR 47312):

Darrell G. Anthony (TX)
Harold L. Pearsall (PA)
Phillip M. Pridgen, Sr. (MD)
Gerald D. Stidham (CO)

The drivers were included in docket number FMCSA–2011–0189. Their exemptions are applicable as of October 31, 2019, and will expire on October 31, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 95 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19283 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0010]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt ten individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on July 20, 2019. The exemptions expire on July 20, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0010* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On June 19, 2019, FMCSA published a notice announcing receipt of applications from ten individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 28619). The public comment period ended on July 19, 2019, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Charity Colleen Crouse submitted a comment expressing concern that these exemptions are being administered to persons other than the individuals listed in this notice, and may be used for illegal activity.

FMCSA verifies the identity and vision deficiencies of individuals through multiple official documents submitted as part of their requests for an exemption from the vision requirements. Individuals must submit a certified motor vehicle record issued from their State Driver Licensing Agency (SDLA) and a copy of a valid CDL or non-CDL license. They must also submit information from their ophthalmologist or optometrist related to a recent medical examination, which verifies the existence and nature of the vision condition. FMCSA finds these steps sufficient for verifying the identity of individuals requesting an exemption and applicability of the exemption.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 19, 2019, **Federal Register** notice (84 FR 28619) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The ten exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, enucleation, hyphema, macular ischemia, retinal detachment, and subluxed lens. In most cases, their eye conditions did not develop recently. Eight of the applicants were either born with their vision impairments or have had them since childhood. The two individuals that developed their vision conditions as adults have had them for a range of four to six years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover,

driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 4 to 84 years. In the past three years, no drivers were involved in crashes, and one driver was convicted of a moving violation in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the ten exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Joseph A. Cardazone (NJ)
Daniel R. Cope, Sr. (IA)
Timothy E. Coultas (IL)
Edwin Figueroa (IL)
Robert F. LaMark (PA)
Con May (IN)
Justin E. Schwada (MO)
Jeffrey A. Sherman (OH)
Chadwick L. St. John (AL)
Clinton A. Vandervoort (TX)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19261 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–26653; FMCSA–2009–0054; FMCSA–2009–0121; FMCSA–2009–0321; FMCSA–2010–0287; FMCSA–2010–0372; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2012–0161; FMCSA–2012–0280; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2014–0298; FMCSA–2014–0301; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2016–0207; FMCSA–2016–0209; FMCSA–2016–0213; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0017; FMCSA–2017–0018]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 74 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA- FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–26653; FMCSA–2009–0054; FMCSA–2009–0121; FMCSA–2009–0321; FMCSA–2010–0287; FMCSA–2010–0372; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2012–0161; FMCSA–2012–0280; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2014–0298; FMCSA–2014–0301; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2016–0207; FMCSA–2016–0209; FMCSA–2016–0213; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0017; or FMCSA–2017–0018, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

II. Background

On June 7, 2019, FMCSA published a notice announcing its decision to renew exemptions for 74 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (84 FR 26719). The public comment period ended on July 8, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 74 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of July and are discussed below. As of July 2, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 42 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 17504; 70 FR 30997; 71 FR 32183; 71 FR 41310; 72 FR 8417; 72 FR 27624; 72 FR 36099; 73 FR 36955; 74 FR 11988; 74 FR 19270; 74 FR 21427; 74 FR 26466; 75 FR 1835; 75 FR 9482; 75 FR 36779; 75 FR 69737; 76 FR 1499; 76 FR 7894; 76 FR 18824; 76 FR 20078; 76 FR 21796; 76 FR 25762; 76 FR 25766; 76 FR 29024; 76 FR 37173; 76 FR 37885; 77 FR 40945; 77 FR 41879; 77 FR 52391; 77 FR 64839; 77 FR 70534; 77 FR 74731; 77 FR 74733; 77 FR 75494; 78 FR 9772; 78 FR 12811; 78 FR 12813; 78 FR 12815; 78 FR 16762; 78 FR 22596; 78 FR 22602; 78 FR 26106; 78 FR 37270; 78 FR 57679; 79 FR 24298; 79 FR 65760; 79 FR 69985; 79 FR 72756; 79 FR 73393; 80 FR 3308; 80 FR 3723; 80 FR 6162; 80 FR 8927; 80 FR 9304; 80 FR 12248; 80 FR 14220; 80 FR 14223; 80 FR 15863; 80 FR 16502; 80 FR 20558; 80 FR 20562; 80 FR 22773; 80 FR 25766; 80 FR 26320; 80 FR 29152; 80 FR 31640; 80 FR 31957; 80 FR 33011; 80 FR 45573; 81 FR 70248; 81 FR 70251; 81 FR 90046; 81 FR 96165; 81 FR 96178; 81 FR 96180; 82 FR 13045; 82 FR 13048; 82 FR 13187; 82 FR 15277; 82 FR 17736; 82 FR 18949; 82 FR 18956; 82 FR 20962; 82 FR 23712; 82 FR 24430; 82 FR 26224; 82 FR 33542; 82 FR 35050; 82 FR 37499):

Luis A. Bejarano (AZ)
Robert W. Blankenship (CA)
Michael R. Bradford (MD)
Ronald G. Bradley (IN)
Justin C. Bruchman (WI)
Douglas S. Dalling (GA)
James M. Demgard (NJ)
Brandon G. Dills (NC)
David L. Ellis (OK)
Larry E. Emanuel (FL)
Michael K. Engemann (MO)
Denise M. Engle (GA)
Kenneth E. Flack, Jr. (AL)
Andrew G. Fornsel (NY)
Anthony A. Gibson (IL)
Robert A. Goerl, Jr. (PA)
Timothy M. Good (MI)
Jeffrey J. Graham (MI)
Wade M. Hillmer (MN)
Michael W. Jensen (CA)
Robert N. Lewis (OH)
Scottie W. Lewis (GA)
Michael J. McGregan (FL)
Anthony R. Miles (NV)
Kenneth H. Morris (NC)
Richard N. Moyer, Jr. (PA)
Al V. Nowviock (IL)
Jerry D. Paul (OK)
George J. Paxson (DE)
John P. Perez (FL)
Garry W. Perkins (NH)
Raymond W. Pitts (FL)
Reginald I. Powell (IL)
John J. Pribanic (TX)
Jason R. Raml (SD)
Charles M. Reese (UT)
Kevin L. Riddle (FL)
Wilbur Robinson (NJ)
Charles H. Smith (IN)
Joseph Stenberg (MT)
Christopher A. Stewart (GA)
James K. Waites (AR)

The drivers were included in docket numbers FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–26653; FMCSA–2009–0054; FMCSA–2009–0321; FMCSA–2010–0287; FMCSA–2010–0372; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2012–0161; FMCSA–2012–0280; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2014–0298; FMCSA–2014–0301; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2016–0207; FMCSA–2016–0209; FMCSA–2016–0213; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0017; FMCSA–2017–0018. Their exemptions are applicable as of July 2, 2019, and will expire on July 2, 2021.

As of July 7, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 31636; 80 FR 48413; 82 FR 33542):

Thomas E. Groves (WV); Stephen T. Hines (NJ); and Herbert S. Lear (PA)

The drivers were included in docket number FMCSA–2015–0049. Their exemptions are applicable as of July 7, 2019, and will expire on July 7, 2021.

As of July 9, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 27281; 78 FR 41188; 80 FR 33007; 82 FR 33542):

Brian G. Dvorak (IL)
Charles T. Spears (VA)
Gregory J. Thurston (PA)
Donald Torbett (IA)

The drivers were included in docket number FMCSA–2013–0028. Their exemptions are applicable as of July 9, 2019, and will expire on July 9, 2021.

As of July 16, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (74 FR 26461; 74 FR 34630; 76 FR 37168; 78 FR 51269; 82 FR 33542):

Steven L. Forristall (WI)
Rocky D. Gysberg (MN)
Charles H. Lefew (VA)
Joseph B. Peacock (NC)

The drivers were included in docket number FMCSA–2009–0121. Their

exemptions are applicable as of July 16, 2019, and will expire on July 16, 2021.

As of July 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 29022; 76 FR 44082; 78 FR 51268; 80 FR 36398; 82 FR 33542):

Stanley C. Anders (SD)
Joel A. Cabrera (FL)
Sherman W. Clapper (ID)
Ronald R. Fournier (NY)
Ronald D. Jackman II (NV)
Thomas W. Kent (IN)
Robert J. MacInnis (MA)
Larry D. Warneke (WA)

The drivers were included in docket number FMCSA–2011–0102. Their exemptions are applicable as of July 22, 2019, and will expire on July 22, 2021.

As of July 23, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 35699; 80 FR 48404; 82 FR 33542):

Garry D. Burkholder (PA)
Wladyslaw Gogola (IL)
Antonio Gomez (PA)
Acquillious Jackson III (SC)
Jimmy D. Johnson II (TN)
Bradley J. Kearl (UT)
Mark A. Pleskovitch (IL)
Edward J. Puto (CT)
Kyle B. Sharp (MI)
Francis A. St. Pierre (NH)

The drivers were included in docket number FMCSA–2015–0052. Their exemptions are applicable as of July 23, 2019, and will expire on July 23, 2021.

As of July 31, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 24798; 78 FR 46407; 80 FR 36395; 82 FR 33542):

Frank L. O'Rourke (NY); Larry F. Reber (OH); and Edward Swaggerty, Jr. (OH)

The drivers were included in docket number FMCSA–2013–0027. Their exemptions are applicable as of July 31, 2019, and will expire on July 31, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: August 29, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–19276 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0093]

Deepwater Port License Application: Texas GulfLink LLC; Extension of Scoping Period

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of extension of the public scoping comment period.

SUMMARY: By **Federal Register** notice of Wednesday, July 3, 2019, titled *Deepwater Port License Application: Texas GulfLink LLC,* 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 Texas GulfLink LLC (Texas GulfLink) 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.

In a **Federal Register** notice dated Wednesday, August 14, 2019, USCG and MARAD previously advised that the public scoping period for Texas GulfLink would be extended until August 30, 2019. MARAD and USCG have determined that a second extension of the public scoping period for the GulfLink application is necessary to allow the public and interested parties a full 30 days to review the application and provide written feedback to the agencies. This second extension is due to delays in getting the application properly posted on the docket. This **Federal Register** Notice announces the date of the extended scoping period.

DATES: Comments or related material on the Texas GulfLink deepwater port license application must be received by September 24, 2019.

ADDRESSES: The public docket for the Texas GulfLink 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–2019–0093.

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. Patrick Clark, 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. Patrick Clark, U.S. Coast Guard, telephone: 202–372–1358, email: *Patrick.W.Clark@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–2019–0093.

Public comment submissions should include:

- Docket number MARAD–2019–0093.
- 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–2019–0093.
- By mail to the Federal Docket Management Facility (MARAD–2019–0093), 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))

Dated: September 3, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–19229 Filed 9–5–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Allocation Availability (NOAA) Inviting Applications for the Calendar Year (CY) 2019 Allocation Round of the New Markets Tax Credit (NMTC) Program

Announcement Type: Announcement of NMTC Allocation availability.

DATES: Electronic applications must be received by 5:00 p.m. ET on October 28, 2019. Applications sent by mail, facsimile, or other form will not be accepted. Please note the Community Development Financial Institutions Fund (CDFI Fund) will only accept applications and attachments (*e.g.,* the Controlling Entity's representative signature page, investor letters, and organizational charts) in electronic form (see Section IV.C of this NOAA for more details). Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. Any Applicant that is not yet certified as a Community Development Entity (CDE) must submit an application for CDE certification through the CDFI Fund's Awards Management Information System (AMIS) on or before 5:00 p.m. ET on September 23, 2019 (see Section III.A.1 of this NOAA for more details on CDE certification).

Executive Summary: This NOAA is issued in connection with the CY 2019 allocation round (Allocation Round) of the New Markets Tax Credit Program (NMTC Program), as authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554) as amended. (26 U.S.C. 45D). Through the NMTC Program, the CDFI Fund provides authority to CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the CDFI Fund announces the availability of $3.5 billion of NMTC Allocation authority in this Allocation Round.

In this NOAA, the CDFI Fund specifically addresses how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC Allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

I. Allocation Availability Description

A. *Programmatic changes from the CY 2018 allocation round:*

1. *Prior QEI Issuance Requirements:* Prior-year NMTC Allocatees will be subject to minimum thresholds for Qualified Equity Investment (QEI) issuance and closing of Qualified Low Income Community Investments (QLICIs) with respect to their prior-year allocations. These thresholds and deadlines have been revised in comparison to the CY 2018 NOAA. See Section III.3 of this NOAA for additional details.

B. *Program guidance and regulations:* This NOAA describes application and Allocation requirements for this Allocation Round of the NMTC Program and should be read in conjunction with: (i) Guidance published by the CDFI Fund on how an entity may apply to become certified as a CDE (66 FR 65806, December 20, 2001); (ii) the final NMTC Regulations issued by the Internal Revenue Service (the IRS) (26 CFR 1.45D–1, published on December 28, 2004), as amended and related guidance, notices and other publications; and (iii) the application and related materials for this Allocation Round. All such materials may be found on the CDFI Fund's website at *https://www.cdfifund.gov.* The CDFI Fund requires Applicants to review these documents. Capitalized terms used, but not defined, in this NOAA have the respective meanings assigned to them in the NMTC Program Allocation Application, Internal Revenue Code (IRC) § 45D or the IRS NMTC regulations. In the event of any inconsistency between this NOAA, the Allocation Application, and guidance issued by the CDFI Fund thereto, IRC § 45D or the IRS NMTC Regulations, the provisions of IRC § 45D and the IRS NMTC Regulations shall govern.

II. Allocation Information

A. *Allocation amounts:* Pursuant to the Protecting Americans from Tax Hikes (PATH) Act of 2015, the CDFI Fund expects that it may allocate to CDEs the authority to issue to their investors the aggregate amount of $3.5 billion in equity as to which NMTCs

may be claimed, as permitted under IRC § 45D(f)(1)(D). Pursuant to this NOAA, the CDFI Fund anticipates that it will issue up to $100 million in tax credit investment authority per Allocatee. The CDFI Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount should the CDFI Fund deem it appropriate. The CDFI Fund reserves the right to allocate NMTC authority to any, all, or none of the entities that submit applications in response to this NOAA, and in any amounts it deems appropriate.

B. *Type of award:* NMTC Program awards are made in the form of allocations of tax credit investment authority.

C. *Allocation Agreement:* Each Allocatee must sign an Allocation Agreement, which must be countersigned by the CDFI Fund, before the NMTC Allocation is effective. The Allocation Agreement contains the terms and conditions of the NMTC Allocation. For further information, see Section VI of this NOAA.

III. Eligibility

A. *Eligible Applicants:* IRC § 45D specifies certain eligibility requirements that each Applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for the available NMTC Allocation authority.

The CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate as defined in the NMTC Allocation Application materials, or any entity otherwise identified as an Affiliate by the Applicant in its NMTC Allocation Application materials.

1. *CDE certification:* For purposes of this NOAA, the CDFI Fund will not consider an application for an allocation of NMTCs unless: (a) The Applicant is certified as a CDE at the time the CDFI Fund receives its NMTC Program Allocation Application; or (b) the Applicant submits an application for certification as a CDE through the AMIS on or before 5:00 p.m. ET on September 23, 2019. Applicants for CDE certification may obtain information regarding CDE certification and the CDE certification application process in AMIS on the CDFI Fund's website at *https://www.cdfifund.gov/programs-training/certification/cde/Pages/default.aspx*. Applications for CDE certification must be submitted in AMIS. Paper versions of the CDE certification application will not be accepted.

The CDFI Fund will not provide NMTC allocation authority to Applicants that are not certified as CDEs or to entities that are certified as Subsidiary CDEs.

If an Applicant that has already been certified as a CDE wishes to change its designated CDE Service Area for this allocation round, it must submit its request for such change to the CDFI Fund, and the request must be received by the CDFI Fund by 5:00 p.m. ET September 23, 2019. A request to change a CDE's Service Area must be submitted through the AMIS as a Service Request. Such requests will need to include, at a minimum, the applicable CDE control number, the revised service area designation, and updated accountability information that demonstrates that the CDE has the required representation from Low-Income Communities in the revised Service Area.

2. As a condition of eligibility for this Allocation Round, the Applicant will not be permitted to use the proceeds of Qualified Equity Investments (QEIs) to make Qualified Low-Income Community Investments (QLICIs) in Qualified Active Low-Income Community Businesses (QALICBs) where QLICI proceeds are used, in whole or in part, to repay or refinance a debt or equity provider whose capital was used to fund the QEI, or are used to repay or refinance any Affiliate of such a debt or equity provider, except where: (i) The QLICI proceeds are used to repay or refinance documented reasonable expenditures that are directly attributable to the qualified business of the QALICB, and such reasonable expenditures were incurred no more than 24 months prior to the QLICI closing date; or (ii) no more than five percent of the total QLICI proceeds from the QEI are used to repay or refinance documented reasonable expenditures that are directly attributable to the qualified business of the QALICB. Refinance includes transferring cash or property, directly or indirectly, to the debt or equity provider or an Affiliate of the debt or equity provider.

3. *Prior award recipients or Allocatees:* Applicants must be aware that success in a prior application or allocation round of any of the CDFI Fund's programs is not indicative of success under this NOAA. Prior award recipients of any CDFI Fund program are eligible to apply under this NOAA, except as follows:

a. *Prior Allocatees and Qualified Equity Investment (QEI) issuance and Qualified Low Income Community Investment (QLICI) requirements:* The following describes the QEI issuance and QLICI requirements applicable to prior Allocatees.

An Allocatee in the CY 2013 allocation round of the NMTC Program is not eligible to receive an NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 31, 2020, it has finalized 100 percent of its QEIs under that allocation and used at least the percentage of those QEIs designated Schedule 1, section 3.2(j) of its CY 2013 NMTC Allocation Agreement to make QLICIs.

An Allocatee in the CY 2014 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 31, 2020, it has finalized 90 percent of its QEIs under that allocation and used at least the percentage of those QEIs designated in Schedule 1, section 3.2(j) of its CY 2014 round NMTC Allocation Agreement to make QLICIs.

An Allocatee in the CY 2015–16 combined allocation round of the NMTC Program is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 31, 2020, it has finalized at least 80 percent of its QEIs under that allocation and used at least the percentage of those QEIs designated in Schedule 1, section 3.2(j) of its CY 2015–16 round NMTC Allocation Agreement to make QLICIs.

An Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2017 allocation round of the NMTC Program is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 31, 2020, it has finalized at least 50 percent of its QEIs under that allocation and used at least the percentage of those QEIs designated in Schedule 1, section 3.2(j) of its CY 2017 round NMTC Allocation Agreement to make QLICIs.

A prior Rural CDE Allocatee (as indicated in its CY 2017 Allocation Agreement) awarded in the CY 2017 allocation round is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on January 31, 2020, it has finalized at least 30 percent of its QEIs under that allocation and used at least the percentage of those QEIs designated in Schedule 1, section 3.2(j) of its CY 2017 round NMTC Allocation Agreement to make QLICIs.

An Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2018 allocation round of the NMTC Program is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 31, 2020, it has finalized at least 30 percent of its QEIs under that allocation and used at least the percentage of those QEIs designated in Schedule 1, section 3.2(j) of its CY 2018 round NMTC Allocation Agreement to make QLICIs. A Rural CDE Allocatee (as indicated in its CY2018 Allocation Agreement) awarded in the CY 2018 Round is not required to meet the above QEI issuance or QLICI thresholds with regard to its CY 2018 NMTC Allocation award.

In addition to the requirements described above, a CDE is not eligible to receive a NMTC Allocation pursuant to this NOAA if an Affiliate of the Applicant is a prior Allocatee and has not met the minimum QEIs issuance and QLICI thresholds as set forth above for Allocatees in the prior allocation rounds of the NMTC Program.

For purposes of this section of the NOAA, the CDFI Fund will only recognize as ''finalized'' those QEIs that have been properly reported in AMIS Allocation Tracking System for Qualified Equity Investments (AQEIs) by the deadlines specified above. Allocatees and their Subsidiary Allocatees, if any, are advised to access AMIS to record each QEI that they issue to an investor in exchange for cash. Instructions on recording a QEI in AMIS is available at *https://amis.cdfifund.gov/s/Training.* Applicants may be required, upon notification from the CDFI Fund, to submit adequate documentation to substantiate the required QEI issuance and QLICI closings. To the extent necessary, the CDFI Fund will request additional QLICI data from Applicants during the application review process in order to determine whether the above thresholds for closed QLICIs have been met by the deadlines specified.

Any prior Allocatee that requires any action by the CDFI Fund (*i.e.,* certifying a subsidiary entity as a CDE; adding a subsidiary CDE to an Allocation Agreement; etc.) in order to meet the QEI issuance requirements above must submit a Certification application for subsidiary CDEs by 5:00 p.m. ET on October 7, 2019 and Allocation Agreement amendment requests by no later than 5:00 p.m. ET on December 30, 2019 in order to guarantee that the CDFI Fund completes all necessary approvals prior to 5:00 p.m. ET on January 31, 2020. Applicants for CDE certification, including for Subsidiary CDE certification, may obtain information regarding CDE certification and the CDE certification application process in AMIS on the CDFI Fund's website at *https://www.cdfifund.gov.* Applications for CDE certification must be submitted in AMIS. Paper versions of the CDE certification application will not be accepted.

b. *Pending determination of noncompliance or default:* If an Applicant is a prior award recipient or Allocatee under any CDFI Fund program and if: (i) It has submitted reports to the CDFI Fund that demonstrate potential noncompliance with a previous assistance or award agreement or default under a previous Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with its previous assistance or award agreement or in default of its previous Allocation Agreement, the CDFI Fund will consider the Applicant's application under this NOAA pending final determination of whether the entity is in noncompliance or default, in the sole determination of the CDFI Fund. Further, if an Affiliate of the Applicant is a prior CDFI Fund award recipient or Allocatee and if such entity: (i) Has submitted reports to the CDFI Fund that demonstrate potential noncompliance with a previous assistance or award agreement or default under a previous Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with its previous assistance or award agreement, or in default of its previous Allocation Agreement, the CDFI Fund will consider the Applicant's application under this NOAA pending final determination of whether the entity is in noncompliance or default, in the sole determination of the CDFI Fund.

c. *Noncompliance or default status:* The CDFI Fund will not consider an application submitted by an Applicant that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a final determination that such Applicant is noncompliant with a previously executed assistance or award agreement, or in default of a previously executed Allocation Agreement; and (ii) the CDFI Fund has provided written notification of such final determination to the Applicant; and (iii) the default occurs during the time period beginning 12 months prior to the application deadline and ending with the execution of the CY 2019 Allocation Agreement. Further, the CDFI Fund will not consider an application submitted by an Applicant with an Affiliate that is a prior award recipient or Allocatee under any CDFI Fund Program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a final determination that such Affiliate is noncompliant with a previously executed assistance or award agreement, or in default of a previously executed Allocation Agreement; (ii) the CDFI Fund has provided written notification of such final determination to the Affiliate; and (iii) the default occurs during the time period beginning 12 months prior to the application deadline and ending with the execution of the CY 2019 Allocation Agreement;

d. *Contact the CDFI Fund:* Accordingly, Applicants that are prior award recipients and/or Allocatees under any other CDFI Fund program are advised to comply with the requirements specified in assistance, allocation and/or award agreement(s). All outstanding reports and compliance questions should be directed to the Office of Certification, Compliance Monitoring, and Evaluation through a Service Request initiated in AMIS. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

The CDFI Fund will respond to Applicants' reporting, compliance or disbursement questions Mondays through Fridays, between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of publication of this NOAA through October 24, 2019 (two business days before the application deadline). The CDFI Fund will not respond to Applicants' reporting, compliance, CDE certification, or disbursement phone calls or email inquiries that are received after 5:00 p.m. ET on October 24, 2019, until after the funding application deadline of October 28, 2019.

4. *Failure to accurately respond to a question in the Assurances and Certifications section of the application, submit the required written explanation, or provide any updates:* In its sole discretion, the CDFI Fund may deem the Applicant's application ineligible, if the CDFI Fund determines that the Applicant inaccurately responded to a question and failed to submit a required written explanation, accurately responded a question yet failed to submit a required written explanation, or failed to notify the CDFI Fund of any changes to the information submitted between the date of application and the date the Allocatee executes the Allocation Agreement, with respect to the Assurances and Certifications. In making this determination, the CDFI

Fund will take into consideration, among other factors, the materiality of the question, the substance of any supplemental responses provided, and whether the information in the Applicant's supplemental responses would have a material adverse effect on the Applicant, its financial condition or its ability to perform under an Allocation Agreement, should the Applicant receive an allocation.

5. *Entities that propose to transfer NMTCs to Subsidiary CDEs:* Both for-profit and non-profit CDEs may apply for NMTC Allocation authority, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit Applicant wishing to apply for a NMTC Allocation must demonstrate, prior to entering into an Allocation Agreement with the CDFI Fund, that: (i) It controls one or more Subsidiary CDEs that are for-profit entities; and (ii) it intends to transfer the full amount of any NMTC Allocation it receives to said Subsidiary CDEs.

An Applicant wishing to transfer all or a portion of its NMTC Allocation to a Subsidiary CDE is not required to create the Subsidiary prior to submitting a NMTC Allocation Application to the CDFI Fund. However, the Subsidiary entities must be certified as CDEs by the CDFI Fund, and enjoined as parties to the Allocation Agreement at closing or by amendment to the Allocation Agreement after closing.

The CDFI Fund requires a non-profit Applicant to submit a CDE Certification application to the CDFI Fund on behalf of at least one for-profit Subsidiary within 60 days after the non-profit Applicant receives notification from the CDFI Fund of its allocation award, as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the CDFI Fund. The CDFI Fund reserves the right to rescind the award if a non-profit Applicant that does not already have a certified for-profit Subsidiary CDE fails to submit a certification application for one or more for-profit Subsidiaries within 60 days of the date it receives notification from the CDFI Fund of its allocation award.

6. *Entities that submit applications together with Affiliates; applications from common enterprises:*

a. As part of the Allocation Application review process, the CDFI Fund will evaluate whether Applicants are Affiliates, as such term is defined in the Allocation Application. If an Applicant and its Affiliate(s) wish to submit Allocation Applications, they must do so collectively, in one application; an Applicant and its Affiliate(s) may not submit separate Allocation Applications. If Affiliated entities submit multiple applications, the CDFI Fund will reject all such applications received, except for those State-owned or State-controlled governmental Affiliated entities. In the case of State-owned or State-controlled governmental entities, the CDFI Fund may accept applications submitted by different government bodies within the same State, but only to the extent the CDFI Fund determines that the business strategies and/or activities described in such applications, submitted by separate entities, are distinctly dissimilar and/or are operated and/or managed by distinctly dissimilar personnel, including staff, board members and identified consultants. In such cases, the CDFI Fund reserves the right to limit award amounts to such entities to ensure that the entities do not collectively receive more than the $100 million cap. If the CDFI Fund determines that the applications submitted by different government bodies in the same State are not distinctly dissimilar and/or operated and/or managed by distinctly dissimilar personnel, it will reject all such applications.

b. For purposes of this NOAA, the CDFI Fund will also evaluate whether each Applicant is operated or managed as a ''common enterprise'' with another Applicant in this Allocation Round using the following indicia, among others: (i) Whether different Applicants have the same individual(s), including the Authorized Representative, staff, board members and/or consultants, involved in day-to-day management, operations and/or investment responsibilities; (ii) whether the Applicants have business strategies and/or proposed activities that are so similar or so closely related that, in fact or effect, they may be viewed as a single entity; and/or (iii) whether the applications submitted by separate Applicants contain significant narrative, textual or other similarities such that they may, in fact or effect, be viewed as substantially identical applications. In such cases, the CDFI Fund will reject all applications received from such entities.

c. Furthermore, an Applicant that receives an allocation in this Allocation Round (or its Subsidiary Allocatee) may not become an Affiliate of or member of a common enterprise (as defined above) with another Applicant that receives an allocation in this Allocation Round (or its Subsidiary Allocatee) at any time after the submission of an Allocation Application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly Controlled solely because of common ownership by QEI investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B of this NOAA and additional application guidance materials on the CDFI Fund's website at *https://www.cdfifund.gov* for more details).

7. *Entities created as a series of funds:* An Applicant whose business structure consists of an entity with a series of funds must apply for CDE certification for each fund. If such an Applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an Applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it must submit a CDE Certification application for the Applicant and each fund it would like to participate in the NMTC Program, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an Applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an Applicant may not transfer any NMTC Allocations it receives to one or more of its funds unless the fund is a certified CDE that is a Subsidiary of the Applicant, enjoined to the Allocation Agreement as a Subsidiary Allocatee.

8. *Entities that are Bank Enterprise Award Program (BEA Program) award recipients:* An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC Allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC Allocation for the same investment in a CDE.

IV. Application and Submission Information

A. *Address to request application package:* Applicants must submit applications electronically under this NOAA, through the CDFI Fund's Awards Management Information System (AMIS). Following the publication of this NOAA, the CDFI Fund will make the electronic Allocation Application available on its website at *https://www.cdfifund.gov.*

B. *Application content requirements:* Detailed application content

requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation, except, if necessary and at the request of the CDFI Fund. Electronic applications must be submitted solely by using the format made available via AMIS. Additional information, including instructions relating to the submission of supporting information (*e.g.,* the Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, organizational charts), is set forth in further detail in the CY 2019 NMTC Application—AMIS Navigation Guide for this Allocation Round. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service (IRS) and assigned to the Applicant and, if applicable, its Controlling Entity. Electronic applications without a valid EIN are incomplete and cannot be transmitted to the CDFI Fund. For more information on obtaining an EIN, please contact the IRS at (800) 829–4933 or *www.irs.gov.* Do not include any personal Social Security Numbers as part of the application.

An Applicant may not submit more than one application in response to this NOAA. In addition, as stated in Section III.A.6 of this NOAA, an Applicant and its Affiliates must collectively submit only one Allocation Application; an Applicant and its Affiliates may not submit separate Allocation Applications except as outlined in Section III.A.6 above. Once an application is submitted, an Applicant will not be allowed to change any element of its application.

C. *Form of application submission:* Applicants may only submit applications under this NOAA electronically via AMIS, the CDFI Fund's Award Management Information System. Applications and required attachments sent by mail, facsimile, or email will not be accepted. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the CDFI Fund in the implementation of electronic reporting requirements.

Electronic applications must be submitted solely by using the CDFI Fund's website and must be sent in accordance with the submission instructions provided in the CY 2019 NMTC Application—AMIS Navigation Guide for this Allocation Rounds. AMIS will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of supporting information (*e.g.,* the Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, and organizational charts) is set forth in further detail in the CY 2019 NMTC Application—AMIS Navigation Guide for this Allocation Round.

D. *Application submission dates and times:*

1. *Application deadlines:*

a. Electronic applications must be received by 5:00 p.m. ET on October 28, 2019. Electronic applications cannot be transmitted or received after 5:00 p.m. ET on October 28, 2019. In addition, Applicants must electronically submit supporting information (*e.g.,* the Controlling Entity's representative signature page, investor letters, and organizational charts). The Controlling Entity's representative signature page, Assurances and Certifications supporting documents, investor letters, and organizational charts must be submitted on or before 5:00 p.m. ET on October 28, 2019. For details, see the instructions provided in the CY 2019 NMTC Application—AMIS Navigation Guide for this Allocation Round on the CDFI Fund's website.

Applications and other required documents received after this date and time will be rejected. Please note that the document submission deadlines in this NOAA and/or the Allocation Application are strictly enforced.

E. *Intergovernmental Review:* Not applicable.

F. *Funding Restrictions:* For allowable uses of investment proceeds related to a NMTC Allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published December 28, 2004 and as amended) and related guidance. Please see Section I, above, for the Programmatic Changes of this NOAA.

G. *Paperwork Reduction:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the application has been assigned the following control number: 1559–0016.

V. Application Review Information

A. *Review and selection process:* All Allocation Applications will be reviewed for eligibility and completeness. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected. Once the application has been determined to be eligible and complete, the CDFI Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the Allocation Application.

In Phase 1, two reviewers will evaluate and score the Business Strategy and Community Outcomes sections of each application. An Applicant must exceed a minimum overall aggregate base score threshold *and* exceed a minimum aggregate section score threshold in each scored section in order to advance from the Phase 1 to the Phase 2 part of the substantive review process. In Phase 2, the CDFI Fund will rank Applicants and determine the dollar amount of allocation authority awarded in accordance with the procedures set forth below.

B. *Criteria:*

1. *Business Strategy (25-point maximum):*

a. When assessing an Applicant's business strategy, reviewers will consider, among other things: The Applicant's products, services and investment criteria; a pipeline of potential business loans or investments consistent with an Applicant's request for an NMTC Allocation; the prior performance of the Applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of QEIs; the Applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the extent to which the Applicant intends to make QLICIs in one or more businesses in which persons unrelated to the entity hold a majority equity interest; and the extent to which Applicants that otherwise have notable relationships with the Qualified Active Low Income Community Businesses (QALICBs) financed will create benefits (beyond those created in the normal course of a NMTC transaction) to Low-Income Communities.

Under the Business Strategy criterion, an Applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which are flexible or non-traditional in form and on better terms than available in the marketplace. An Applicant will also score well to the

extent that, among other things: (i) It has identified a set of clearly-defined potential borrowers or investees; (ii) it has a track record of successfully deploying loans or equity investments and providing services similar to those it intends to provide with the proceeds of QEIs; (iii) its projected dollar volume of NMTC deployment is supported by its track record of deployment; (iv) in the case of an Applicant proposing to purchase loans from CDEs, the Applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities. If the Applicant (or its Affiliates) have notable relationships with QALICBs, the Applicant will generally score well if it quantifies how such relationships will create benefits (*i.e.,* cost savings, lower fees) for QALICBs, unaffiliated end-users such as tenant businesses, or residents of Low-Income Communities.

b. *Priority Points:* In addition, as provided by IRC § 45D(f)(2), the CDFI Fund will ascribe additional points to entities that meet one or both of the statutory priorities. First, the CDFI Fund will give up to five (5) additional points to any Applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the CDFI Fund will give five (5) additional points to any Applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making QLICIs in one or more businesses in which persons unrelated (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) to an Applicant (and the Applicant's subsidiary CDEs, if the Subsidiary Allocatee makes the QLICI) hold the majority equity interest. Applicants may earn points for one or both statutory priorities. Thus, Applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an Applicant itself or by its Controlling Entity (*e.g.,* where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An Applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC Allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from its QEIs in unrelated businesses. The CDFI Fund will include an Applicant's priority points when ranking Applicants during Phase 2 of the review process, as described below.

2. *Community Outcomes (25-point maximum):* In assessing the potential benefits to Low-Income Communities that may result from the Applicant's proposed investments, reviewers will consider, among other things, the degree to which the Applicant is likely to: (i) Achieve significant and measurable community development outcomes in its Low-Income Communities; (ii) invest in particularly economically distressed markets: (iii) Engage with local communities regarding investments; (iv) the level of involvement of community representatives in the Governing Board and/or Advisory Board in approving investment criteria or decisions; and (v) demonstrate a track record of investing in businesses that spur additional private capital investment in Low-Income Communities.

An Applicant will generally score well under this section to the extent that, among other things: (a) It will generate clear and well supported community development outcomes; (b) it has a track record of producing quantitative and qualitative community outcomes that are similar to those projected to be achieved with an NMTC Allocation; (c) it is working in particularly economically distressed or otherwise underserved communities; (d) its activities are part of a broader community or economic development strategy; (e) it demonstrates a track record of community engagement around past investment decisions; (f) it ensures that an NMTC investment into a project or business is supported by and will be beneficial to Low-Income Persons and residents of Low-Income Communities (LICs); and (g) it is likely to engage in activities that will spur additional private capital investment.

C. *Phase 2 Evaluation.*

1. *Application Ranking and Anomaly Reviews:* Using the numeric scores from Phase 1, Applicants are ranked on the basis of each Applicant's combined scores in the Business Strategy and Community Outcomes sections of the application plus one half of the priority points. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the two application scored sections) varies significantly from the other reviewer's total base scores or section scores for such application, the CDFI Fund may, in its sole discretion, obtain the evaluation and numeric scoring of an additional third reviewer to determine whether the anomalous score should be replaced with the score of the additional third reviewer.

2. *Late Reports:* In the case of an Applicant or any Affiliates that has previously received an award or Allocation from the CDFI Fund through any CDFI Fund program, the CDFI Fund will deduct points from the Applicant's ''Final Rank Score'' for the Applicant's (or its Affiliate's) failure to meet any of the reporting deadlines set forth in any assistance, award or Allocation Agreement(s), if the reporting deadlines occurred during the period from June 28, 2018 to the application deadline in this NOAA (October 28, 2019).

3. *Prior Year Allocatees:* In the case of Applicants (or their Affiliates) that are prior year Allocatees, the CDFI Fund will review the activities of the prior year Allocatee to determine whether the entity has: (a) Effectively utilized its prior-year Allocations in a manner generally consistent with the representations made in the relevant Allocation Application (including, but not limited to, the proposed product offerings, QALICB type, fees and markets served); (b) issued QEIs and closed QLICIs in a timely manner; and (c) substantiated a need for additional allocation authority. The CDFI Fund will use this information in determining whether to reject or reduce the allocation award amount of its NMTC Allocation Application.

The CDFI Fund will award allocations in the order of the ''Final Rank Score,'' subject to Applicants meeting all other eligibility requirements; provided, however, that the CDFI Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process.

4. *Management Capacity:* In assessing an Applicant's management capacity, CDFI Fund will consider, among other things, the current and planned roles, as well as qualifications of the Applicant's (and Controlling Entity's, if applicable): Principals, board members, management team, and other essential staff or contractors, with specific focus on: experience in providing loans, equity investments or financial counseling and other services, including activities similar to those described in the Applicant's business strategy; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax credit programs; and the Applicant's (or its Controlling Entity's) financial health. CDFI Fund evaluators will also consider the extent to which an Applicant has protocols in place to

ensure ongoing compliance with NMTC Program requirements and the Applicant's projected income and expenses related to managing an NMTC Allocation.

An Applicant will be generally evaluated more favorably under this section to the extent that its management team or other essential personnel have experience in: (a) Providing loans, equity investments or financial counseling and other services in Low-Income Communities, particularly those likely to be served by the Applicant with the proceeds of QEIs; (b) asset and risk management; and (c) fulfilling government compliance requirements, particularly tax credit program compliance. An Applicant will also be evaluated favorably to the extent it demonstrates strong financial health and a high likelihood of remaining a going-concern; it clearly explains levels of income and expenses; has policies and systems in place to ensure portfolio quality, ongoing compliance with NMTC Program requirements; and, if it is a Federally-insured financial institution, has its most recent Community Reinvestment Act (CRA) rating as ''outstanding.''

5. *Capitalization Strategy:* When assessing an Applicant's capitalization strategy, CDFI Fund will consider, among other things: The key personnel of the Applicant (or Controlling Entity) and their track record of raising capital, particularly from for-profit investors; the extent to which the Applicant has secured investments or commitments to invest in NMTC (if applicable), or indications of investor interest commensurate with its requested amount of tax credit Allocations, or, if a prior Allocatee, the track record of the Applicant or its Affiliates in raising Qualified Equity Investments in the past five years; the Applicant's strategy for identifying additional investors, if necessary, including the Applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the distribution of the economic benefits of the tax credit; and the extent to which the Applicant intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations.

An Applicant will be evaluated more favorably under this section to the extent that: (a) It or its Controlling Entity demonstrate a track record of raising investment capital; (b) it has secured investor commitments, or has a reasonable strategy for obtaining such commitments, or, if it or its Affiliates is a prior Allocatee with a track record in the past five years of raising Qualified Equity Investments and; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to a QALICB; and (d) it intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations. In the case of an Applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the Applicant or from Affiliated entities, said Applicant will be evaluated more favorably to the extent that it will offer products with more favorable rates or terms than those currently offered by its investor(s) or Affiliated entities and/or will target its activities to areas of greater economic distress than those currently targeted by the investor or Affiliated entities.

D. *Allocations serving Non-Metropolitan counties:* As provided for under Section 102(b) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), the CDFI Fund shall ensure that Non-Metropolitan counties receive a proportional allocation of QEIs under the NMTC Program. The CDFI Fund will endeavor to ensure that 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-Metropolitan counties. In addition, the CDFI Fund will ensure that the proportion of Allocatees that are Rural CDEs is, at a minimum, equal to the proportion of Applicants in the highly qualified pool that are Rural CDEs. A Rural CDE is one that has a track record of at least three years of direct financing experience, has dedicated at least 50 percent of its direct financing dollars to Non-Metropolitan counties over the past five years, and has committed that at least 50 percent of its NMTC financing dollars with this Allocation will be deployed in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 10–02 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied using 2010 census tracts.

Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with ''preliminary'' awards, in descending order of Final Rank Score, until the available allocation authority is fulfilled. Once these ''preliminary'' award amounts are determined, the CDFI Fund will then analyze the Allocatee pool to determine whether the two Non-Metropolitan proportionality objectives have been met.

The CDFI Fund will first examine the ''preliminary'' awards and Allocatees to determine whether the percentage of Allocatees that are Rural CDEs is, at a minimum, equal to the percentage of Applicants in the highly qualified pool that are Rural CDEs. If this objective is not achieved, the CDFI Fund will provide awards to additional Rural CDEs from the highly qualified pool, in descending order of their Final Rank Score, until the appropriate percentage balance is achieved. In order to accommodate the additional Rural CDEs in the Allocatee pool within the available Allocation limitations, a formula reduction may be applied as uniformly as possible to the allocation amount for all Allocatees in the pool that have not committed to investing a minimum of 20 percent of their QLICIs in Non-Metropolitan counties.

The CDFI Fund will then determine whether the pool of Allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The CDFI Fund will first apply the ''minimum'' percentage of QLICIs that Allocatees indicated in their applications would be targeted to Non-Metropolitan areas to the total Allocation award amount of each Allocatee (less whatever percentage the Allocatee indicated would be retained for non-QLICI activities), and total these figures for all Allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the Allocatees, then the pool is considered balanced and the CDFI Fund will proceed with the Allocation process. However, if the aggregate total is less than 20 percent of the QLICIs to be made by the Allocatees, the CDFI Fund will consider requiring any or all of the Allocatees to direct up to the ''maximum'' percentage of QLICIs that the Allocatees indicated would be targeted to Non-Metropolitan counties, taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties. If the CDFI Fund cannot meet the goal of 20 percent of QLICIs in Non-Metropolitan counties by requiring any or all Allocatees to commit up to the maximum percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties, the CDFI Fund may add additional highly qualified Rural CDEs (in descending order of final rank score) to the Allocatee pool. In order to accommodate any additional Allocatees within the allocation limitations, a formula reduction will be applied as uniformly as possible, to the allocation amount for all Allocatees in the pool

that have not committed to investing a minimum of 20 percent of their QLICIs in Non-Metropolitan counties.

E. *Questions:* All outstanding reports or compliance questions should be directed to the Office of Certification, Compliance Monitoring, and Evaluation through the submission of a Service Request in AMIS or by telephone at (202) 653–0423. The CDFI Fund will respond to reporting or compliance questions Mondays through Fridays, between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of the publication of this NOAA through October 24, 2019. The CDFI Fund will not respond to reporting or compliance phone calls or email inquiries that are received after 5:00 p.m. ET on October 24, 2019 until after the funding application deadline of October 28, 2019.

F. *Right of rejection:* The CDFI Fund reserves the right to reject any NMTC Allocation Application in the case of a prior CDFI Fund award recipient, if such Applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC Allocation Application in the case of a prior CDFI Fund Allocatee, if such Applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC Allocation Application in the case of any Applicant, if an Affiliate of the Applicant has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the CDFI Fund.

The CDFI Fund reserves the right to reject or reduce the allocation award amount of any NMTC Allocation Application in the case of a prior Allocatee, if such Applicant has failed to use its prior NMTC Allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings, QALICB type, fees and markets served) set forth in the Allocation Application(s) related to such prior Allocation(s) or such Applicant has been found by the IRS to have engaged in a transaction or series of transactions designed to achieve a result that is inconsistent with the purposes of IRC § 45D. The CDFI Fund also reserves the right to reject or reduce the allocation award amount of any NMTC Allocation Application in the case of an Affiliate of the Applicant that is a prior Allocatee and has failed to use its prior NMTC Allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings, QALICB type, fees and markets served) set forth in the Allocation Application(s) related to such prior NMTC Allocation(s) or has been found by the IRS to have engaged in a transaction or series of transactions designed to achieve a result that is inconsistent with the purposes of IRC § 45D.

The CDFI Fund reserves the right to reject an NMTC Allocation Application if information (including, but not limited to, administrative errors or omission of information) comes to the attention of the CDFI Fund that adversely affects an Applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an application, adversely affects the CDFI Fund's prior determinations of CDE certification, or indicates fraud or mismanagement on the part of an Applicant, its Affiliate(s), or the Controlling Entity, if such fraud or mismanagement by the Affiliate(s) or Controlling Entity would hinder the Applicant's ability to perform under the Allocation Agreement. If the CDFI Fund determines that any portion of the application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the CDFI Fund may permit the Allocation Recommendation Panel member(s) to request information from Applicants for the sole purpose of obtaining, clarifying or confirming application information or omission of information. In no event shall such contact be construed to permit an Applicant to change any element of its application. At this point in the process, an Applicant may be required to submit additional information about its application in order to assist the CDFI Fund with its final evaluation process. If the Applicant (or the Controlling Entity or any Affiliate) has previously been awarded an NMTC Allocation, the CDFI Fund may also request information on the use of those NMTC Allocations, to the extent that this information has not already been reported to the CDFI Fund. Such requests must be responded to within the time parameters set by the CDFI Fund. The selecting official(s) will make a final allocation determination based on an Applicant's file, including, without limitation, eligibility under IRC§ 45D, the reviewers' scores and the amount of NMTC Allocation authority available. The CDFI Fund reserves the right to reject any NMTC Allocation Application if additional information is obtained that, after further due diligence and in the discretion of the CDFI Fund, would hinder the Applicant's ability to effectively perform under the Allocation Agreement.

In the case of Applicants (or the Controlling Entity, or Affiliates) that are regulated or receive oversight by the Federal government or a State agency (or comparable entity), the CDFI Fund may request additional information from the Applicant regarding Assurances and Certifications or other information about the ability of the Applicant to effectively perform under the Allocation Agreement. The Allocation Recommendation Panel or selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal banking and other regulatory agencies. In the case of Applicants (or Affiliates of Applicants) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the CDFI Fund reserves the right to consult with and take into consideration the views of the Small Business Administration. An Applicant that is or is Affiliated with an insured depository institution will not be awarded an allocation if it has a composite rating of ''5'' on its most recent examination, performed in accordance with the Uniform Financial Institutions Rating System.

Furthermore, the CDFI Fund will not award an NMTC Allocation to an Applicant that is an insured depository institution or is an Affiliate of an insured depository institution, if during the time period beginning with the application deadline and ending with the execution of the CY 2019 Allocation Agreement; the Applicant received any of the following:

1. CRA assessment rating of below ''Satisfactory'' on its most recent examination,

2. A going concern opinion on its most recent audit; or

3. A Prompt Corrective Action directive from its regulator.

The CDFI Fund reserves the right to conduct additional due diligence on all Applicants, as determined reasonable and appropriate by the CDFI Fund, in its sole discretion, related to the Applicant, Affiliates, the Applicant's Controlling Entity and the officers, directors, owners, partners and key employees of each. This includes the right to consult with the IRS if the Applicant (or the Controlling Entity, or Affiliates) has

previously been awarded an NMTC Allocation.

Each Applicant will be informed of the CDFI Fund's award decision through an electronic notification whether selected for an allocation or not selected for an allocation, which may be for reasons of application incompleteness, ineligibility, or substantive issues. Eligible Applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to receive feedback on their applications. This feedback will be provided in a format and within a timeframe to be determined by the CDFI Fund, based on available resources.

The CDFI Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If said changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's website.

There is no right to appeal the CDFI Fund's NMTC Allocation decisions. The CDFI Fund's NMTC Allocation decisions are final.

VI. Award Administration Information

A. *Allocation Award Compliance*

1. *Failure to meet reporting requirements:* If an Allocatee, or an Affiliate of an Allocatee, is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation, or award agreement(s) as of the date the CDFI Fund provides notification of an NMTC Allocation award or thereafter, the CDFI Fund reserves the right, in its sole discretion, to reject the application, delay entering into an Allocation Agreement, and/or impose limitations on an Allocatee's ability to issue QEIs to investors until said prior award recipient or Allocatee is current on the reporting requirements in the previously executed assistance, allocation, or award agreement(s). Please note that the automated systems the CDFI Fund uses for receipt of reports submitted electronically typically acknowledges only a report's receipt; such an acknowledgment does not warrant that the report received was complete and therefore met reporting requirements.

2. *Pending determination of noncompliance or default:* If an Allocatee is a prior award recipient or Allocatee under any CDFI Fund program and if: (i) It has submitted reports to the CDFI Fund that demonstrate potential noncompliance with a previous assistance or award agreement or a potential default under an Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is noncompliant with a previous assistance or award agreement or is in default under a previous Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending final determination of whether the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. Further, if an Affiliate of an Allocatee is a prior CDFI Fund award recipient or Allocatee and if such entity: (i) Has submitted reports to the CDFI Fund that demonstrate potential noncompliance under a previous assistance or award agreement or potential default under a previous Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance under its previous assistance or award agreement, or in default of its previous Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, pending final determination of whether the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. If the prior award recipient or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance or default, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award notification made under this NOAA.

3. *Determination of noncompliance or default status:* If prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a final determination that an Allocatee that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund program is (i) noncompliant with a previously executed assistance or award agreement, or is in default of a previously executed Allocation Agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the noncompliance or default occurs during the time period beginning 12 months prior to the application deadline and ending with the execution of the CY 2019 Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the NMTC Allocation made under this NOAA.

Furthermore, if prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a final determination that an Affiliate of an Allocatee that is a prior CDFI Fund award recipient or Allocatee under any CDFI Fund programs is in noncompliance of a previously executed assistance or award agreement or in default of a previously executed Allocation Agreement(s); (ii) the CDFI Fund has provided written notification of such determination to such organization; and (ii) the default occurs during the time period beginning 12 months prior to the application deadline and ending with the execution of the CY 2019 Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the NMTC Allocation made under this NOAA.

B. *Allocation Agreement:* Each Applicant that is selected to receive a NMTC Allocation (Allocatee) (including their Subsidiary Allocatees) must enter into an Allocation Agreement with the CDFI Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC Allocation which may include, but are not limited to, the following: (i) the amount of the awarded NMTC Allocation; (ii) the approved uses of the awarded NMTC Allocation (*e.g.,* loans to or equity investments in Qualified Active Low-Income Businesses, loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) commitments to specific ''innovative activities'' discussed by the Allocatee in its Allocation Application; (v) the time period by which the Allocatee may obtain QEIs from investors; (vi) reporting requirements for the Allocatee; and (vii) a requirement to maintain certification as a CDE throughout the term of the Allocation Agreement. If an Allocatee represented in its NMTC Allocation Application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the Allocatee hold a majority equity

interest, the Allocation Agreement will contain a covenant to that effect.

In addition to entering into an Allocation Agreement, each Allocatee must furnish to the CDFI Fund an opinion from its legal counsel or a similar certification, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an Allocatee (and its Subsidiary Allocatees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary Allocatees, the CDFI Fund reserves the right to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary Allocatees. The CDFI Fund reserves the right, in its sole discretion, to rescind its NMTC Allocation award if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the CDFI Fund with any other requested documentation, including an approved legal opinion, within the deadlines set by the CDFI Fund.

C. *Fees:* The CDFI Fund reserves the right, in accordance with applicable Federal law and, if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC Allocations. Prior to imposing any such fee, the CDFI Fund will publish additional information concerning the nature and amount of the fee.

D. *Reporting:* The CDFI Fund will collect information, on at least an annual basis from all Allocatees and/or CDEs that are recipients of QLICIs, including such audited financial statements and opinions of counsel as the CDFI Fund deems necessary or desirable, in its sole discretion. The CDFI Fund will require the Allocatee to retain information as the CDFI Fund deems necessary or desirable and shall provide such information to the CDFI Fund when requested to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The CDFI Fund may also provide such information to the IRS in a manner consistent with IRC § 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each QEI raised through its NMTC Allocation to make QLICIs. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

VII. Agency Contacts

The CDFI Fund will provide programmatic and information technology support related to the Allocation Application Mondays through Fridays, between the hours of 9:00 a.m. and 5:00 p.m. ET through October 24, 2019. The CDFI Fund will not respond to phone calls or emails concerning the application that are received after 5:00 p.m. ET on October 24, 2019 until after the Allocation Application deadline of October 28, 2019. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *https://www.cdfifund.gov.* The CDFI Fund will post on its website responses to questions of general applicability regarding the NMTC Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 653–0422 or by submitting a Service Request in AMIS. People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the CDFI Fund's website should call (202) 653–0422 for assistance. These are not toll free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by submitting a Service Request in AMIS; or by telephone at (202) 653–0421. These are not toll-free numbers.

C. *Administrative support:* If you have any questions regarding the administrative requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by submitting a Service Request in AMIS, or by telephone at (202) 653–0421. These are not toll free numbers.

D. *IRS support:* For questions regarding the tax aspects of the NMTC Program, contact Jian Grant and James Holmes, Office of the Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 317–4137, or by facsimile at (855) 591–7867. These are not toll free numbers. Applicants wishing for a formal ruling request should see IRS Internal Revenue Bulletin 2018–1, issued January 2, 2018.

VIII. Information Sessions

In connection with this NOAA, the CDFI Fund may conduct one or more information sessions that will be produced in Washington, DC and broadcast over the internet via webcasting as well as telephone conference calls. For further information on these upcoming information sessions, please visit the CDFI Fund's website at *https://www.cdfifund.gov.*

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Jodie Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2019–19203 Filed 9–5–19; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of one person currently included on OFAC's list of Specially Designated Nationals and Blocked Persons.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On September 3, 2019, OFAC updated the SDN List for the following person,

whose property and interests in property continue to be blocked under the Foreign Narcotics Kingpin Designation Act.

Individual

1. BELTRAN LEYVA, Alfredo (a.k.a. BELTRAN LEYVA, Hector Alfredo), Mexico; DOB 21 Jan 1971; alt. DOB 15 Feb 1951; POB La Palma, Badiriguato, Sinaloa, Mexico; citizen Mexico; nationality Mexico; SSN 604–26–2627 (United States) (INDIVIDUAL) [SDNTK].

The listing for the following person now appear as follows:

1. BELTRAN LEYVA, Alfredo (a.k.a. BELTRAN LEYVA, Hector Alfredo), Mexico; DOB 21 Jan 1971; POB La Palma, Badiraguato, Sinaloa, Mexico; nationality Mexico; citizen Mexico (individual) [SDNTK].

Dated: September 3, 2019.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting.

[FR Doc. 2019–19243 Filed 9–5–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

DATES: Written comments must be submitted on or before November 5, 2019 to be assured of consideration.

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

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments. Refer to Docket Number OFAC–2019–0004 and the Office of Management and Budget (OMB) control number 1505–0255.

Fax: Attn: Request for Comments (Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts) 202–622–1759.

Mail: Attn: Request for Comments (Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Refer to Docket Number OFAC–2019–0004 and the Office of Management and Budget (OMB) control number 1505–0255.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via *www.regulations.gov* or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Title: Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

OMB Number: 1505–0255.

Abstract: Section 566.504(b) of the Hizballah Financial Sanctions Regulations, 31 CFR part 566 (the HFSR) provides that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution (FFI), whose name is added to the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (CAPTA) List [1] (previously the HFSR List) on OFAC's website (*www.treasury.gov/ofac*) as subject to a prohibition on the maintaining of such accounts, must file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. The report must include complete information on all transactions processed or executed through the account, including the account outside the United States to which funds remaining in the account were transferred. This collection of information assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable-through accounts for FFIs subject to such prohibitions pursuant to 31 CFR part 566. The reports will be reviewed by the U.S. Department of the Treasury and may be used for compliance, civil penalty, and enforcement purposes by the agency.

Current Actions: There are no changes being made to the information collection at this time.

Type of Review: Extension without change of a currently approved collection.

Affected Public: U.S. financial institutions operating correspondent accounts or payable-through accounts for FFIs.

Estimated Number of Respondents: The likely respondents and record-keepers affected by this collection of information in section 566.504(b) are U.S. financial institutions operating correspondent accounts or payable through accounts for FFIs. Since the date this reporting requirement was added to the HFSR (April 15, 2016) through the current reporting period, OFAC has added no names related to the HFSR to the CAPTA List; therefore, the number of respondents to this collection remains zero. For future notices, OFAC will continue to report retrospectively on the number of respondents during the reporting period.

Estimated Time per Respondent: 2 hours per response.

Estimated Total Annual Burden Hours: While no responses are expected, an estimate of 1 response (2 hours) is being included to account for the possibility that someone could have to provide a notification in the future.

Request for Comments

Comments submitted in response to this notice will be summarized or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

[1] The CAPTA List, published on March 14, 2019, is designed to include FFIs subject to correspondent or payable-through account sanctions pursuant to sanctions authorities including the Ukraine Freedom Support Act of 2014, as amended by the Countering America's Adversaries Through Sanctions Act; the North Korea Sanctions Regulations, 31 CFR part 510; the Iran Freedom and Counter-Proliferation Act of 2012; the Iranian Financial Sanctions Regulations, 31 CFR part 561; the Hizballah Financial Sanctions Regulations, 31 CFR part 566; Executive Order 13846; and Executive Order 13871.

agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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.

Approved: September 3, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–19268 Filed 9–5–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Creating Options for Veterans Expedited Recovery (COVER) Commission; Notice of Meeting

In accordance with the Federal Advisory Committee Act, the Creating Options for Veterans Expedited Recover (COVER) Commission gives notice of a meeting to be held on September 12 and 13, 2019, at the VHA National Conference Center 2011 Crystal Drive, Crystal City, Virginia 22202. The public session on September 12, will begin at 9:00 a.m. and conclude at approximately 3:00 p.m. On September 13, the public session will begin at 9:00 a.m. and conclude at approximately 1:00 p.m. (all times Eastern).

The purpose of the COVER Commission is to examine the evidence-based therapy treatment model used by the Department of Veterans Affairs (VA) for treating mental health conditions of Veterans and the potential benefits of incorporating complementary and integrative health approaches as standard practice throughout the Department. The planned topics for this meeting include general discussion of commission research.

Members of the public are invited to attend open sessions in-person or via telephone listening line. Only a limited amount of seating will be available, and members of the public will be seated on a first come-first served basis. The listening line number is 800–767–1750; access code 48664# and it will be activated 10 minutes prior to each day's sessions. Members of the public utilizing the listening line are asked to confirm their attendance via an email to *COVERCommission@va.gov*. The videotaping or recording of Commission proceedings is discouraged as it may be disruptive to the Commission's work.

Any member of the public seeking additional information including copies of materials referenced during open sessions should email the Designated Federal Officer for the Commission, Mr. John Goodrich, at *COVERCommission@va.gov*. Although there will not be time allotted for members of the public to speak, the COVER Commission will accept written comments which may be sent to the email address noted. In communications with the Commission, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: September 3, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–19301 Filed 9–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Special Medical Advisory Group will meet on September 26, 2019 at the VHA National Conference Center, 2011 Crystal Drive, Suite 150 A, Potomac Room A–B, Crystal City, Arlington, VA 22202, from 8:15 a.m. to 3:30 p.m. EST. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Veterans Health Administration (VHA).

The agenda for the meeting will include discussions regarding quality standards for community care, Veterans assessment tool for the Caregiver Support Program, efforts to develop a National suicide prevention roadmap as required by the PREVENTS Executive Order, and proposals required by MISSION Act Section 152 regarding innovations for care and payments pilots.

There will not be a public comment period, however, members of the public may submit written statements for review by the Committee to: Department of Veterans Affairs, SMAG—Office of Under Secretary for Health (10), Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420 or by email at *VASMAGDFO@va.gov.* Comments will be accepted until close of business on September 24, 2019.

Any member of the public wishing to attend the meeting or seeking additional information should email *VASMAGDFO@va.gov* or call 202–461–7005.

Dated: August 30, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–19213 Filed 9–5–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0017]

Agency Information Collection Activity Under OMB Review: VA Fiduciary's Account, Court Appointed Fiduciary's Account, and Certificate of Balance on Deposit and Authorization To Disclose Financial Records

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits 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 October 7, 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. 2900–0017'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0017'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Supplement to VA Forms 21P–4706b, 21P–4706c and 21P–4718a.

OMB Control Number: 2900–0017.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA maintains supervision of the distribution and use of VA benefits paid to fiduciaries on behalf of VA beneficiaries who are incompetent, a minor, or under legal disability. The forms are used to verify beneficiaries' deposit remaining at a financial institution against a fiduciary's accounting. The following forms will be used to ensure claimants' benefits payments are administered properly.

(a) VA Forms 21P–4706b and 4706c are used by VA to determine proper usage of benefits paid to fiduciaries. The 21P–4706c is provided to assist VA fiduciaries in conforming to requirements of various State courts.

(b) VA Form 21P–4718a—Fiduciaries are required to obtain certifications that the balances remaining on deposit in financial institutions as shown on accountings are correct. Certifying official at a financial institution completing the form must affix the institution's official seal or stamp. The data collected is used to confirm appointment of a fiduciary for a VA beneficiary and to prevent fiduciaries from supplying false certification, embezzling funds, and possibly prevent and/or identify fraud, waste and abuse of government funds paid to fiduciaries on behalf of VA beneficiaries.

Without this information, VA would be unable to determine if the veteran's fiduciary is properly using the funds for this benefit according to VA law. The forms were inadvertently allowed to expire due to competing priorities at VA.

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 117 on June 18, 2019, pages 28395 and 28396.

Affected Public: Individuals or Households.

Estimated Average Annual Burden: 11,167 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 33,500.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–19246 Filed 9–5–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 173 September 6, 2019

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products Residual Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2016–0243; FRL–9999–07–OAR]

RIN 2060–AO66

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Plywood and Composite Wood Products (PCWP) to address the results of the residual risk and technology review (RTR) that the EPA is required to conduct under the Clean Air Act (CAA). The EPA is proposing to amend provisions addressing periods of startup, shutdown and malfunction (SSM); add provisions regarding electronic reporting; add repeat emissions testing requirements; and make technical and editorial changes. The EPA is proposing these amendments to improve the effectiveness of the NESHAP. While the proposed amendments would not result in reductions in emissions of hazardous air pollutants (HAP), this action, if finalized, would result in improved monitoring, compliance, and implementation of the rule.

DATES:

Comments. Comments must be received on or before October 21, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before October 7, 2019.

Public hearing. If anyone contacts us requesting a public hearing on or before September 11, 2019, the EPA will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/plywood-and-composite-wood-products-manufacture-national-emission.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2016–0243, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2016–0243 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2016–0243.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Environmental Protection Agency Docket ID No. EPA–HQ–OAR–2016–0243, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday—Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Katie Hanks, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2159; fax number: (919) 541–0516; and email address: *hanks.katie@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *hirtz.james@epa.gov.* For questions about monitoring and testing requirements, contact Mr. Kevin McGinn, Sector Policies and Programs Division (D230–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3796; fax number: (919) 541–4991; and email address: *mcginn.kevin@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2221A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Ms. Virginia Hunt at (919) 541–0832 or by email at *hunt.virginia@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2016–0243. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2016–0243. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be 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. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points

you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, 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 digital storage media 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 not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2016–0243.

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

AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
ATCM Airborne Toxic Control Measure
ATSDR Agency for Toxic Substances and Disease Registry
CAA Clean Air Act
CalEPA California EPA
CARB California Air Resources Board
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CMS continuous monitoring systems
EAV equivalent annualized value
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guideline
ERT Electronic Reporting Tool
GACT generally available control technology
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model-3
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
ICR information collection request
IRIS Integrated Risk Information System
km kilometer
MACT maximum achievable control technology
MDF medium density fiberboard
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NIST National Institute of Standards and Technology
NRDC Natural Resources Defense Council
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OSB oriented Strandboard
OSHA Occupational Safety and Health Administration
PBCO production-based compliance option
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PCWP plywood and composite wood products
PDF portable document format
POM polycyclic organic matter
ppm parts per million
PRA Paperwork Reduction Act
PV present value
RATA relative accuracy test audit
RCO regenerative catalytic oxidizer
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTO regenerative thermal oxidizer
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE Total Risk Integrated Methodology. Fate, Transport, and Ecological Exposure model
TSCA Toxic Substances Control Act
UF uncertainty factor
μg/m^3 microgram per cubic meter
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
USGS U.S. Geological Survey
VCS voluntary consensus standards

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

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I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (*see* EPA–450/3–91–030, July 1992), the Plywood and Particleboard source category is any facility engaged in the manufacturing of plywood and/or particle boards. This category includes, but is not limited to, manufacturing of chip waferboard, strandboard, waferboard, hardboard/cellulosic fiber board, oriented strandboard (OSB), hardboard plywood, medium density fiberboard (MDF), particleboard, softwood plywood, or other processes using wood and binder systems. The name of the source category was changed to Plywood and Composite Wood Products (PCWP) on November 18, 1999 (64 FR 63025), to more accurately reflect the types of manufacturing facilities covered by the source category. In addition, when the EPA proposed the PCWP rule on January 9, 2003 (68 FR 1276), the scope of the source category was broadened to include lumber kilns located at stand-alone kiln-dried lumber manufacturing facilities or at any other type of facility.

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

Source category	NESHAP	NAICS code [1]
Plywood and Composite Wood Products	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.	321999, 321211, 321212, 321219, 321213.

[1] North American Industry Classification System.

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

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/plywood-and-composite-wood-products-manufacture-national-emission*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall RTR program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*.

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2016–0243).

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, or control technologies'' that may be appropriate to incorporate into the standards. This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also

establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [1] of approximately 1 in 10 thousand.'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, the EPA considers whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which the EPA calls the ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

Plywood and composite wood products are manufactured by bonding wood material (fibers, particles, strands, *etc.*) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. Plywood and composite wood products manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. Plywood and composite wood products include (but are not limited to) plywood, veneer, particleboard, OSB, hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams.

This proposal includes both a residual risk assessment and a technology review of the standards applicable to emission sources subject to the PCWP NESHAP. The NESHAP contains several compliance options for process units subject to the standards: (1) Installation and use of emissions control systems with an efficiency of at least 90 percent; (2) production-based limits that restrict HAP emissions per unit of product produced; and (3) emissions averaging that allows control of emissions from a group of sources collectively (at existing affected sources). These compliance options apply for the following process units: Fiberboard mat dryer heated zones (at new affected sources); green rotary dryers; hardboard ovens; press predryers (at new affected sources); pressurized refiners; primary tube dryers; secondary tube dryers; reconstituted wood product board coolers (at new affected sources); reconstituted wood product presses; softwood veneer dryer heated zones; rotary strand dryers; and conveyor strand dryers (zone one at existing affected sources, and zones one and two at new affected sources). In addition, the PCWP NESHAP includes work practice standards for dry rotary dryers, hardwood veneer dryers, softwood veneer dryers, veneer redryers, and group 1 miscellaneous coating operations (defined in 40 CFR 63.2292).

In 2007, the D.C. Circuit remanded and vacated portions of the 2004 NESHAP promulgated by the EPA to establish MACT standards for the PCWP source category. *NRDC* v. *EPA,* 489 F.3d 1364 (D.C. Cir. 2007). The EPA will address the partial remand and vacatur of the 2004 rule in a future action. The EPA is not addressing the partial remand and vacatur in this RTR. The Court vacated and remanded portions of the 2004 rule based on certain aspects of the MACT determinations made by the EPA. In the 2004 rule, the EPA had concluded that the MACT standards for several process units were represented by no emission reduction (or ''no control'' emission floors). The ''no control'' MACT conclusions were rejected because, as the Court clarified, in a related decision, the EPA must establish emission standards for listed HAP. 489 F.3d 1364, 1371, citing *Sierra*

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

Club v. *EPA,* 479 F.3d 875 (D.C. Cir. 2007).

To address the remand, the EPA plans to develop emission standards for the relevant process units in a separate action subsequent to this proposed RTR action for the source category. As noted below, the EPA conducted an information collection prior to beginning the RTR process which supplemented the available HAP emission inventory for the category. The EPA will evaluate the data collected and any additional information submitted before initiating the rulemaking to address the remand.

C. What data collection activities were conducted to support this action?

On October 5, 2017, the EPA issued an Information Collection Request (ICR) to gather information from PCWP manufacturers to support conducting the PCWP NESHAP RTR. The ICR gathered detailed process data, emission release point characteristics, and HAP emissions data for PCWP process units located at major sources. The response rate for the ICR was over 99 percent. For more details on the data collection conducted to prepare inputs for the residual risk assessment, see the memorandum titled *Preparation of the Residual Risk Modeling Inputs File for the PCWP NESHAP* in the docket for this rulemaking. For more details on the data collection conducted for the technology review, see the memoranda titled *Technology Review for the Plywood and Composite Wood Products NESHAP* and *Compilation of the Plywood and Composite Wood Products (PCWP) Information Collection Request (ICR) Responses into an ICR-Response Data Base,* also available in the docket.

D. What other relevant background information and data are available?

In addition to ICR data spreadsheets provided by respondents, the EPA reviewed other information sources to determine if there have been developments in practices, processes, or control technologies by PCWP facilities to support the technology review of the NESHAP. These information sources include:

- Emissions data (*e.g.,* stack test reports, emissions calculations) submitted with survey responses;
- Facility operating permits submitted with survey responses or obtained from state agencies;
- Semiannual compliance reports submitted with survey responses;
- Other documentation submitted with survey responses (*e.g.,* compliance calculations; process flow diagrams);
- Information and data analyses submitted by industry organizations;
- Information obtained during site visits and meetings with stakeholders;
- Information on air pollution control options in the PCWP industry from the EPA's Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate Clearinghouse;
- Information on applicability and compliance issues from the EPA's Applicability Determination Index; and
- Literature review of recent information on PCWP practices, processes, and control technologies.

III. Analytical Procedures and Decision-Making

In this section, the EPA describes the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), the EPA applies a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information.'' 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[2] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained that:

> [t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will 'protect the public health'.

See 54 FR 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. In other words, risks that include an MIR where 100-in-1 million may be determined to be acceptable and risks with an MIR below that level may be determined to be unacceptable, depending on all of the available information. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''EPA believes the relative weight

[2] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential HAP exposure concentration to the noncancer dose-response value; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. The EPA also considers the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that we have not considered certain health information to date in making residual risk determinations. At this time, the EPA does not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. The EPA recognizes that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [3]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency (1) conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although the EPA is interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that the EPA has studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where the EPA identifies such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. The EPA also considers the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, the EPA considers the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time the EPA originally developed the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. See sections II.C and II.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

C. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that the EPA generally performs during the risk assessment process. In some cases, the EPA does not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), the EPA would not perform a multipathway exposure assessment. Where the EPA does not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.A of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The seven sections that follow this paragraph describe how the EPA estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document which provides more information on the risk assessment

[3] Recommendations of the SAB Risk and Technology Review Panel are provided in their report, which is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

inputs and models: *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule.* The methods used to assess risk (as described in the seven primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009;[4] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

In October 2017, the EPA initiated an ICR to gather information from U.S. PCWP manufacturers to support conducting the PCWP RTR. The ICR response period ended in February 2018. The ICR gathered process data, emission release point characteristics, coordinates, and HAP emissions data for PCWP process units located at major sources of HAP. Assembly and quality assurance of the ICR data needed to construct the residual risk modeling file for the PCWP source category is discussed in *Preparation of Residual Risk Modeling Inputs File for the PCWP NESHAP,* which is available in the docket for this action.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. The EPA discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, the EPA noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. The EPA also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

The PCWP ICR requested that respondents provide estimates of allowable emissions based on their site-specific circumstances (*e.g.,* control measures in place). Therefore, unlike other RTR projects that develop a multiplier to estimate allowable emissions from actual emissions reported in the National Emissions Inventory (NEI), the directly reported ICR data for allowable emissions were used for the PCWP category.[5]

The allowable emissions estimates provided by the ICR respondents were reviewed for completeness and to ensure they made sense relative to actual emissions. Approximately 95 percent of the allowable emissions estimates provided by respondents were reasonable and were used without revision. The remaining allowable emission estimates were either missing, provided as zero, or otherwise suspect compared to actual emissions. Because nearly all the allowable emissions estimates in need of gap-filling were for process units without PCWP MACT standards requiring use of add-on controls, the gaps and adjustments were completed by setting the MACT-allowable emission rates equal to the actual emission rates.[6]

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[7] The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[8] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[9] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, the EPA uses the estimated annual average ambient air concentrations of each HAP emitted by each source in the source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, the EPA calculates the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. The EPA calculates individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate

[4] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

[5] Sroka, K., E. Rickman, and C. Moss, RTI, and K. Hanks, U.S. EPA. *Preparation of Residual Risk Modeling Inputs File for the PCWP NESHAP.* Memorandum to the PCWP Docket File. February 7, 2019.

[6] *Id.*

[7] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[8] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[9] A census block is the smallest geographic area for which census statistics are tabulated.

(URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, the EPA generally uses UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, the EPA looks to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by the EPA, the EPA may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, the EPA sums the risks for each of the carcinogenic HAP [10] emitted by the modeled facility. The EPA estimates cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, the EPA estimates the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. The EPA also estimates annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, the EPA calculates either an HQ or a target organ-specific hazard index (TOSHI). The EPA calculates an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, the EPA sums the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*https://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. In this proposed rulemaking, as part of the EPA's efforts to continually improve our methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[11] we are revising our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* The EPA will be applying this revision in RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, the EPA uses the peak hourly emission rate for each emission point,[12] reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile), and the point of highest off-site exposure. Specifically, the EPA assumes that peak emissions from the source category and reasonable worst-case air dispersion conditions co-occur and that a person is present at the point of maximum exposure.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, the EPA generally uses multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour

[10] The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[11] See, *e.g.,* U.S. EPA. *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017. *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*).

[12] In the absence of hourly emission data, the EPA develops estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* Both are available in the docket for this rulemaking.

exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure concentration by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [13] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[14] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are ''developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [15] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from the EPA's acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, the EPA also reports the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For this source category, estimates of short-term (maximum hourly) emissions were submitted by PCWP ICR respondents. In our review of the ICR data, the EPA compared the short-term emission estimates to annual emissions estimates to ensure the short-term emission estimates were reasonable. The EPA gap-filled short-term emission estimates that were missing or found to be invalid with short-term emission estimates calculated using a PCWP emission process-specific acute multiplier. The acute multiplier, which is a factor multiplied by annual emissions to estimate maximum hourly emissions, was derived from the ICR data for each emissions process group. The acute factors used to gap-fill missing or invalid short-term emission estimates in the PCWP ICR inventory ranged from 1.2 to 10. Further discussion of the process-specific factors chosen to fill gaps in the ICR data can be found in the memorandum, *Preparation of Residual Risk Modeling Inputs File for the PCWP NESHAP,* available in the docket for this rulemaking.

In the EPA's acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1, and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, the EPA assesses the site-specific data to ensure that the acute HQ is at an off-site location. For this source category, the data refinements employed consisted of evaluating residential properties outside the facility boundaries to estimate acute impacts that exceeded an HQ screen of 1. These refinements are discussed more fully in the *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this source category.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source category emit any HAP known to be persistent and bioaccumulative in the environment, as identified in the EPA's Air Toxics Risk Assessment Library (See Volume 1, Appendix D, at *https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the PCWP source category, we identified PB–HAP emissions of arsenic, polychlorinated dibenzodioxins and furans (dioxins/furans), polycyclic organic matter (POM), cadmium, mercury, and lead, so we proceeded to the next step of the evaluation. Except for lead, the human health risk screening assessment for PB–HAP consists of three progressive tiers. In a Tier 1 screening assessment, we determine whether the magnitude of the facility-specific emissions of PB–HAP warrants further evaluation to characterize human health risk through

[13] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[14] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs (*https://www.epa.gov/aegl*).

[15] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

ingestion exposure. To facilitate this step, we evaluate emissions against previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, dioxins/furans, mercury compounds, and POM. Based on the EPA estimates of toxicity and bioaccumulation potential, these pollutants represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/2013-08/documents/volume_1_reflibrary.pdf*). In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, dioxins/furans, and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment. The Tier 2 screening assessment separates the Tier 1 combined fisher and farmer exposure scenario into fisher, farmer, and gardener scenarios that retain upper-bound ingestion rates.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher/farmer scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility and assume the fisher only consumes fish from lakes within that 50 km zone. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and the USGS lakes database.

In the Tier 2 farmer scenario, we maintain an assumption that the farm is located within 0.5 km of the facility and that the farmer consumes meat, eggs, dairy, vegetables, and fruit produced near the facility. We may further refine the Tier 2 screening analysis by assessing a gardener scenario to characterize a range of exposures, with the gardener scenario being more plausible in RTR evaluations. Under the gardener scenario, we assume the gardener consumes home-produced eggs, vegetables, and fruit products at the same ingestion rate as the farmer. The Tier 2 screen continues to rely on the high-end food intake assumptions that were applied in Tier 1 for local fish (adult female angler at 99th percentile fish consumption [16]) and locally grown or raised foods (90th percentile consumption of locally grown or raised foods for the farmer and gardener scenarios [17]). If PB–HAP emission rates do not result in a Tier 2 screening value greater than 1, we consider those PB–HAP emissions to pose risks below a level of concern. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates, we may conduct a Tier 3 screening assessment.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, locating residential/garden locations for urban and/or rural settings, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume rise on chemical fate and transport (a time-series analysis). If necessary, the EPA may further refine the screening assessment through a site-specific assessment.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.[18] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see Appendix 6 of the *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

5. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and

[16] Burger, J. 2002. Daily consumption of wild fish and game: Exposures of high end recreationists. *International Journal of Environmental Health Research* 12:343–354.

[17] U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

[18] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety to protect public health''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, the EPA evaluates the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, the EPA evaluates nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, the EPA identified the available ecological benchmarks for each assessment endpoint. The EPA identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, the EPA uses all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the PCWP source category emitted any of the environmental HAP. For the PCWP source category, the EPA identified emissions of arsenic compounds, cadmium compounds, dioxins/furans, lead compounds, mercury compounds, POM, HCl, and HF. Because the above environmental HAP are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, the EPA evaluates the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, the EPA evaluates the average soil concentration for all soil parcels within a 7.5-km radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, the EPA evaluates the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, the EPA examines the suitability of the lakes around the facilities to support life and remove those that are not suitable (*e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), the EPA may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, the EPA compared the average modeled air concentrations (from HEM–3) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, the EPA evaluates the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km^2; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility

(calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

6. How do we conduct facility-wide assessments?

To put the source category risks in context, the EPA typically examines the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, the EPA examines the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which the EPA has data. For this source category, the EPA conducted the facility-wide assessment using a dataset compiled from the 2014 NEI. The source category records of that NEI dataset were removed and replaced with the quality-assured ICR source category dataset described in the memorandum titled *Preparation of the Residual Risk Modeling Input File for the PCWP NESHAP,* in the docket for this rulemaking. This ICR source category dataset was then combined with the non-source category records from the NEI for that facility. The combined facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source category addressed in this proposal. The EPA also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. For example, older emission factors that do not account for relatively recent reductions in resin formaldehyde content may have been used by some PCWP mills to estimate emissions from uncontrolled process units that are hard to test, resulting in overestimation of formaldehyde emissions. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. For facilities with missing or invalid short-term emission estimates in their PCWP ICR data, the estimates of maximum hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

The EPA recognizes there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, the EPA selects some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). The EPA selects other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that the EPA selects have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach the EPA applies in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. After reviewing the physical characteristics of emission releases from batch and continuous lumber kilns, dispersion and risk modelers at the EPA recommend the buoyant plume rise resulting from the elevated temperature of kiln exhaust be taken into account when modeling kiln fugitive emissions to improve accuracy. Appendix 12 of the document, *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* in the docket for this rulemaking describes the methodology and results. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As the EPA continues to update and expand the library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in the EPA's emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our

exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, the EPA reduces uncertainty when possible. For example, with respect to census-block centroids, the EPA analyzes large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. The EPA also adds additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in the EPA's risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in the EPA's risk assessments are those that have been developed to generally provide an upper bound estimate of risk.[19] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[20] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[21] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. The EPA established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

Although the EPA makes every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where the EPA concludes similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, the EPA may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), the EPA conservatively uses the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, the EPA also applies the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emission rates, meteorology, and the presence of a person. In the acute screening assessment that the EPA conducts under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. The EPA then includes the additional assumption that

[19] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[20] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[21] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case exposure scenario. In most cases, it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, the EPA generally relies on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, the EPA uses AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[22]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, the EPA configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. The EPA also assumes an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, the EPA refines the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values and identifies the actual location of lakes near the facility rather than the default lake location applied in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, the EPA decreases the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, the EPA refines the model inputs again to account for hour-by-hour plume rise and the height of the mixing layer. The EPA can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, the EPA employs a single-tiered approach. The EPA uses the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments, the EPA's approach to addressing model input uncertainty is generally cautious. The EPA chooses model inputs from the upper end of the range of possible values for the influential parameters used in the models, and assumes that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.,* screen out), the EPA is confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that the EPA cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which the EPA can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, the EPA may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

IV. Analytical Results and Proposed Decisions

A. What are the results of the risk assessment and analyses?

1. Chronic Inhalation Risk Assessment Results

Table 2 of this preamble provides an overall summary of the inhalation risk results. The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual and allowable emissions, the MIR posed by the PCWP source category was estimated to be 30-in-1 million. The risk driver is chiefly formaldehyde emissions from batch and continuous lumber kilns. The total estimated cancer incidence based on actual and allowable emission levels from all PCWP emission

[22] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

sources is 0.03 excess cancer cases per year, or one case in every 33 years, with emissions from the lumber kilns representing 43 percent of the modeled cancer incidence in the source category. Emissions of formaldehyde, acetaldehyde, and chromium VI compounds contributed 93 percent to this cancer incidence with formaldehyde being the largest contributor (76 percent of the incidence). Based upon actual emissions from the source category, approximately 200,000 people were exposed to cancer risks above or equal to 1-in-1 million.

The maximum chronic noncancer HI (TOSHI) values based on actual and allowable emissions for the source category were estimated to be less than 1. Based upon actual emissions from the source category, respiratory risks were driven by acrolein, acetaldehyde, and formaldehyde emissions from batch lumber kilns. Based upon allowable emissions from the source category, the respiratory risk was driven by methylene diphenyl diisocyanate emissions from a miscellaneous coating operation and formaldehyde emissions from lumber kilns.

TABLE 2—PLYWOOD AND COMPOSITE WOOD PRODUCTS INHALATION RISK ASSESSMENT RESULTS [1]

Risk assessment	Number of facilities [2]	Maximum individual cancer risk (in 1 million) [3]	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [4]	Maximum screening acute noncancer HQ [5]
Baseline Actual Emissions						
Source Category ..	233	30	204,000	0.03	0.8	4 (REL) 0.2 (AEGL–1).
Facility-Wide	233	30	260,000	0.04	1	
Baseline Allowable Emissions						
Source Category ..	233	30	230,000	0.03	0.8	

[1] Based on actual and allowable emissions.
[2] Number of facilities evaluated in the risk assessment. Includes 230 operating facilities subject to 40 CFR part 63, subpart DDDD plus three existing facilities that are currently closed but maintain active operating permits.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[4] Maximum TOSHI. The target organ with the highest TOSHI for the PCWP source category is the respiratory system.
[5] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When an HQ exceeds 1, the EPA also shows the HQ using the next lowest available acute dose-response value.

2. Screening Level Acute Risk Assessment Results

Worst-case acute HQs were calculated for every HAP for which there is an acute health benchmark using actual emissions. The maximum refined off-site acute noncancer HQ values for the source category were equal to 4 from acrolein emissions and 2 from formaldehyde emissions (based on the acute (1-hr) REL for these pollutants). The acrolein and formaldehyde maximum HQ values were at separate facilities. No other acute health benchmarks were exceeded for this source category. The acute risk driver for acrolein was primarily from continuous lumber kilns and the MIR location for acute formaldehyde risks were from batch lumber kilns. The continuous and batch lumber kilns were modeled with hourly emissions ranging from 2 to 8 times the annual average hourly emissions rate. Acute HQs are not calculated for allowable or whole facility emissions.

3. Multipathway Risk Screening Results

Results of the worst-case Tier 1 screening analysis indicate that PB–HAP emissions (based on estimates of actual emissions) emitted from the source category exceeded the screening values for the carcinogenic PB–HAP (arsenic, dioxin/furan, and POM compounds) and for the noncarcinogenic PB–HAP (cadmium and mercury) based upon emissions from 48 facilities reporting carcinogenic PB–HAP and 19 facilities reporting non-carcinogenic PB–HAP in the source category. For the PB–HAP and facilities that did not screen out at Tier 1, the EPA conducted a Tier 2 screening analysis.

The Tier 2 screen replaces some of the assumptions used in Tier 1 with site-specific data, the location of fishable lakes, and local wind direction and speed. The Tier 2 screen continues to rely on high-end assumptions about consumption of local fish and locally grown or raised foods (adult female angler at 99th percentile consumption for fish [23] for the fisher scenario and 90th percentile for consumption of locally raised livestock and grown produce (vegetables and fruits) [24]) for the farmer scenario and uses an assumption that the same individual consumes each of these foods in high end quantities (*i.e.,* that an individual has high end ingestion rates for each food). The result of this analysis was the development of site-specific concentrations of dioxin/furan, POM compounds, arsenic compounds, cadmium and mercury compounds. It is important to note that, even with the inclusion of some site-specific information in the Tier 2 analysis, the multipathway screening analysis is a still a very conservative, health-protective assessment (*e.g.,* upper-bound consumption of local fish, locally grown, and/or raised foods) and in all likelihood will yield results that serve as an upper-bound multipathway risk associated with a facility.

Based on this upper-bound Tier 2 screening assessment for carcinogens, the dioxin/furan and POM emission rates for all facilities and scenarios were below levels of concern. Arsenic emissions exceeded the screening value by a factor of 70 for the farmer scenario, a factor of 40 for the gardener scenario, and a factor of 6 for the fisher scenario. The Tier 2 gardener scenario is based upon the same ingestion rate of produce as the farmer for a rural environment. No additional refined screens or site-specific assessments were conducted for

[23] Burger, J. 2002. *Daily consumption of wild fish and game: Exposures of high end recreationists.* International Journal of Environmental Health Research 12:343–354.

[24] U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

emissions of arsenic based upon the conservative nature of the Tier 2 screen and because the screening value was below the level of acceptability of 100-in-1 million. For the non-carcinogens, emissions of cadmium were below an HQ of 1 for the Tier 2 fisher scenario. For mercury, three facilities exceeded the Tier 2 multipathway screening values of 1 by a factor of 2 based upon aggregate lake impacts by facilities within the source category for the fisher scenario.

For mercury, the EPA conducted a Tier 3 multipathway screen for two facilities which included two of the three individual stages. These stages included a lake assessment for fishability and the mass lost due to plume rise, a time-series assessment was not conducted. A lake and plume rise assessment was conducted resulting in a maximum Tier 3 screening value of 2, a 20-percent reduction in their Tier 2 screening value was achieved due to plume rise. A screening value in any of the tiers is not an estimate of the cancer risk or a noncancer HQ (or HI). Rather, a screening value represents a high-end estimate of what the risk or hazard may be. For example, facility emissions resulting in a screening value of 2 for a non-carcinogen can be interpreted to mean that we are confident that the HQ would be lower than 2. Similarly, facility emissions resulting in a cancer screening value of 40 for a carcinogen means that we are confident that the cancer risk is lower than 40-in-1 million. Our confidence comes from the health-protective assumptions that are incorporated into the screens: We choose inputs from the upper end of the range of possible values for the influential parameters used in the screens; and we assume food consumption behaviors that would lead to high total exposure. This risk assessment estimates the maximum hazard for mercury through fish consumption based on upper bound screens and the maximum excess cancer risks from dioxins/furans and arsenic through ingestion of fish and farm produce.

When we progress from the model designs of the Tier 1, 2, and 3 screens to a site-specific assessment, we refine the risk assessment through incorporation of additional site-specific data and enhanced model designs. Site-specific refinements include the following; (1) improved spatial locations identifying the boundaries of the watershed and lakes within the watershed as it relates to surrounding facilities within the source category; (2) calculating actual soil/water run-off amounts to target lakes based upon actual soil type(s) and elevation changes associated with the affected watershed versus assuming a worst-case assumption of 100-percent run-off to target lakes; and (3) incorporating AERMOD deposition of pollutants into TRIM.FaTE to accurately account for site-specific release parameters such as stack heights and exit gas temperatures, versus using TRIMFaTE's simple dispersion algorithms that assume the pollutant is uniformly distributed within the airshed. These refinements have the net effect of improved modeling of the mass of HAP entering a lake by more accurately defining the watershed/lake boundaries as well as the dispersion of HAP into the atmosphere to better reflect deposition contours across all target watersheds and lakes in our 50 km model domain.

The maximum mercury Tier 2 noncancer screening value for this source category is 2 with subsequent refinement resulting in a Tier 3 screening value of 2. No additional refinements to the Tier 3 screen value of 2 were conducted by the EPA. Risk results from four site-specific mercury assessments the EPA has conducted for four RTR source categories resulted in noncancer HQs that range from 50 to 800 times lower than the respective Tier 2 screening value for these facilities (refer to EPA Docket ID: EPA–HQ–OAR–2016–0243 for a copy of these reports).[25] Based on our review of these analyses, we would expect at least a one order of magnitude decrease in all Tier 2 noncancer screening values for mercury for the PCWP source category, if we were to perform a site-specific assessment. In addition, based upon the conservative nature of the screens and the level of additional refinements that would go into a site-specific multipathway assessment, were one to be conducted, we are confident that the HI for ingestion exposure, specifically mercury through fish ingestion, is less than 1.

Further details on the Tier 3 screening assessment can be found in Appendix 11 of *Residual Risk Assessment for the Plywood Composite and Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* in the docket for this action.

In evaluating the potential for multipathway effects from emissions of lead, the EPA compared modeled annual lead concentrations to the primary NAAQS level for lead (0.15 μg/m^3, arithmetic mean concentration over a 3-month period. The highest annual average lead concentration of 0.013 μg/m^3 is below the NAAQS level for lead, indicating a low potential for multipathway impacts.

4. Environmental Risk Screening Results

The EPA conducted an environmental risk screening assessment for the PCWP source category for the following pollutants: Arsenic, cadmium, dioxins/furans, HCl, HF, lead, mercury (methyl mercury and mercuric chloride), and POM.

In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), arsenic, cadmium, dioxins/furans, and POM emissions had no Tier 1 exceedances for any ecological benchmark. Divalent mercury emissions at nine facilities had Tier 1 exceedances for the surface soil threshold levels (invertebrate and plant communities) by a maximum screening value of 5. Methyl mercury emissions at 13 facilities had Tier 1 exceedances for the surface soil NOAEL (avian ground insectivores) by a maximum screening value of 7.

A Tier 2 screening assessment was performed for divalent mercury and methyl mercury. Divalent mercury and methyl mercury had no Tier 2 exceedances for any ecological benchmark. For lead, the EPA did not estimate any exceedances of the secondary lead NAAQS. For HCl and HF, the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. Based on the results of the environmental risk screening analysis, the EPA does not expect an adverse environmental effect as a result of HAP emissions from this source category.

5. Facility-Wide Risk Results

Results of the assessment of facility-wide emissions indicate that of the 233 facilities, 182 facilities have a facility-wide MIR cancer risk greater than 1-in-1 million. The maximum facility-wide cancer risk is 30-in-1 million, mainly driven by formaldehyde emissions from batch and continuous lumber kilns. The

[25] EPA Docket records: Appendix 11 of the *Residual Risk Assessment for the Taconite Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule;* Appendix 11 of the *Residual Risk Assessment for the Integrated Iron and Steel Source Category in Support of the Risk and Technology Review 2019 Proposed Rule;* Appendix 11 of the *Residual Risk Assessment for the Portland Cement Manufacturing Source Category in Support of the 2018 Risk and Technology Review* Final Rule; and Appendix 11 of the *Residual Risk Assessment for the Coal and Oil-Fired EGU Source Category in Support of the 2018 Risk and Technology Review Proposed Rule.*

total estimated cancer incidence from the whole facility is 0.04 excess cancer cases per year, or one case in every 25 years. Approximately 260,000 people are estimated to have cancer risks greater than 1-in-1 million. The maximum facility-wide chronic noncancer TOSHI is estimated to be equal to 1, driven by emissions of acrolein, chlorine, and HCl from non-category sources.

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, the EPA performed a demographic analysis, which is an assessment of risk to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, the EPA evaluated the distribution of HAP-related cancer and noncancer risk from the PCWP source category across different demographic groups within the populations living near facilities.

The results of the demographic analysis are summarized in Table 3 below. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—PLYWOOD AND COMPOSITE WOOD PRODUCTS DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to PCWP	Population with chronic hazard index above 1 due to PCWP
Total Population	317,746,049	204,164	0
Race by Percent			
White	62	63	0
All Other Races	38	37	0
Race by Percent			
Hispanic or Latino (includes white and nonwhite)	18	9	0
African American	12	24	0
Native American	0.8	1.1	0
Other and Multiracial	7	3	0
Income by Percent			
Below Poverty Level	14	23	0
Above Poverty Level	86	77	0
Education by Percent			
Over 25 and without a High School Diploma	14	18	0
Over 25 and with a High School Diploma	86	82	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	2	0

The results of the PCWP source category demographic analysis indicate that emissions from the source category expose approximately 200,000 people to a cancer risk at or above 1-in-1 million and zero people to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population in four of the eleven demographic groups (African American, Native American, below poverty level, and over 25 without a high school diploma) are greater than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Plywood and Composite Wood Products Source Category,* available in the docket for this action.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability

As noted in section II.A of this preamble, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand.'' (54 FR 38045, September 14, 1989).

In this proposal, the EPA estimated risks based on actual and allowable emissions from the PCWP source category. In determining whether risks are acceptable, the EPA considered all available health information and risk estimation uncertainty, as described above. Table 2 summarizes the risk assessment results for the source category. The results for the PCWP source category indicate that both the actual and allowable inhalation cancer risks to the individual most exposed are below the presumptive limit of acceptability of 100-in-1 million (see discussion of presumptive risk in background section II.A). The residual risk assessment for the PCWP category [26] estimated cancer incidence rate at 0.03 cases per year based on both source category actual and allowable emissions. The low number for the predicted cancer incidence is, in part

[26] *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* EPA–HQ–OAR–2016–0243.

due to the rural location of many PCWP facilities. The population estimate of 204,000 people exposed to a cancer risk equal to or above 1-in-1 million from source category actual emissions from 170 facilities reflects the rural nature of the source category. Another factor in the low incidence number is that the estimate of people exposed to a cancer risk greater than 10-in-1 million from source category actual emissions drops to 650 people.

The maximum chronic noncancer TOSHI due to inhalation exposures is less than 1 for actual and allowable emissions from the source category. The results of the acute screening analysis showed maximum acute HQs of 4 for acrolein and 2 for formaldehyde emissions. The EPA is proposing to find the acute risks acceptable for the source category considering the conservative assumptions used that err on the side of overestimating acute risk (as discussed in section III.C.7.e).

Maximum cancer risk due to ingestion exposures estimated using health-protective risk screening assumptions are below 6-in-1 million for the Tier 2 fisher scenario and below 40-in-1 million for the Tier 2 rural gardener exposure scenario. While the Tier 3 screening analyses of mercury exposure due to fish ingestion determined that the maximum HQ for mercury would be less than 2, the EPA is confident that this estimate would be reduced if further refined to incorporate enhanced site-specific analyses such as improved model boundary identification with refined soil/water run-off calculations and use of AERMOD deposition outputs in the TRIM.FaTE model. Considering all of the health risk information and factors discussed above, as well as the uncertainties discussed in section III of this preamble, we propose that the risks posed by emissions from the PCWP source category are acceptable after implementation of the existing MACT standards.

2. Ample Margin of Safety Analysis

As directed by CAA section 112(f)(2), the EPA conducted an analysis to determine if the current emissions standards provide an ample margin of safety to protect public health. Under the ample margin of safety analysis, the EPA considers all health factors evaluated in the risk assessment and evaluates the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to this source category to further reduce the risks (or potential risks) due to emissions of HAP identified in our risk assessment. Although the EPA is proposing that the risks from this source category are acceptable for both inhalation and multipathway, risk estimates for approximately 200,000 people in the exposed population surrounding 170 facilities producing PCWP or kiln-dried lumber are equal to or above 1-in-1 million, caused primarily by formaldehyde emissions. The EPA considered whether the PCWP MACT standards provide an ample margin of safety to protect public health. The EPA did not identify methods for further reducing HAP emissions from the PCWP source category that would achieve meaningful risk reductions for purposes of the ample margin of safety analysis. Therefore, the EPA is proposing that the current PCWP standards provide an ample margin of safety to protect public health and revision of the promulgated standards is not required.

3. Adverse Environmental Effect

The EPA does not expect there to be an adverse environmental effect as a result of HAP emissions from this source category and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

C. What are the results and proposed decisions based on the EPA's technology review?

As described in section III.B of this preamble, the EPA's technology review focused on identifying developments in practices, processes, and control technologies for process units subject to standards under the NESHAP that have occurred since 2004 when emission standards were promulgated for the PCWP source category. The EPA reviewed ICR responses and other available information (described in sections II.C and II.D of this preamble) to conduct the technology review. The following process units were included in our review: Green rotary dryers, hardboard ovens, pressurized refiners, primary tube dryers, reconstituted wood product presses, softwood veneer dryer heated zones, rotary strand dryers, secondary tube dryers, conveyor strand dryers, fiberboard mat dryers, press predryers, and reconstituted wood product board coolers. The technological basis for the promulgated PCWP NESHAP was use of incineration-based or biofilter add-on controls to reduce HAP emissions. Incineration-based controls include regenerative thermal oxidizers (RTOs), regenerative catalytic oxidizers (RCOs), and incineration of process exhaust in an onsite combustion unit (referred to as ''process incineration''). In addition to the add-on control device compliance options in Table 1B to 40 CFR part 63, subpart DDDD, Table 1A to 40 CFR part 63, subpart DDDD contains production-based compliance options (PBCO) for process units with low emissions due to pollution prevention measures inherent in their process (*e.g.,* low-formaldehyde resins). An emissions averaging compliance option is also available for existing sources in 40 CFR 63.2240(c). One facility demonstrates compliance with the PCWP NESHAP using emissions averaging because none of the other compliance options were feasible for controlling the unique operations at this facility.

Most facilities comply with the PCWP NESHAP using the add-on control options. The EPA observed in our review that many facilities route multiple process units of the same or different types into one shared control system. Facilities use RTOs, RCOs, process incineration, and biofilter control systems as expected. The numerous different process unit and control device combinations that are used in the source category underscore the ongoing utility of the compliance options in Table 1B to 40 CFR part 63, subpart DDDD. The EPA reviewed emissions test data for PCWP process units with add-on controls and concluded that no change in the add-on control emission limits is necessary considering emissions variability. The incremental cost of increasing the required HAP control efficiency from 90-to 95-percent reduction was estimated for new sources to be $670,000 nationwide for a nationwide HAP reduction of 47 tpy ($14,400 per ton of HAP reduced). The EPA is not adopting this option because it was not clearly supported by the emissions data reviewed. The emissions data reflected repeat emissions tests with variability spanning above and below the 95-percent control level, suggesting that maintaining 95-percent HAP control with some compliance margin would be unachievable for the variety of process and control configurations used in the industry. Further, as discussed below, the HAP inlet concentration of some process units has decreased, making the 90-percent reduction options more challenging to achieve.

Through our review of the ICR data, the EPA found a few facilities currently use the PBCO. Due to a development in the PCWP source category, the EPA expects the PBCO could become more widely used as current add-on air pollution controls for reconstituted

wood products presses reach the end of their useful life. In 2008, after the PCWP NESHAP was promulgated, the California Air Resources Board (CARB) finalized an Airborne Toxic Control Measure (ATCM) to reduce formaldehyde emissions from hardwood plywood, MDF, and particleboard. Consistent with the CARB ATCM, in July 2010, Congress passed the Formaldehyde Standards for Composite Wood Products Act, as title VI of Toxic Substances Control Act (TSCA), [15 U.S.C. 2697], requiring the EPA to promulgate a national rule. The EPA subsequently proposed a rule in 2013 to implement TSCA title VI to reduce formaldehyde emissions from composite wood products. The TSCA rule (Formaldehyde Emission Standards for Composite Wood Products, RIN 2070–AJ44) was finalized by the EPA on December 12, 2016 (81 FR 89674), and an implementation rule was finalized on February 7, 2018 (83 FR 5340). Compliance with all aspects of the TSCA rule was required by December 2018. The CARB ATCM and the rule to implement TSCA title VI emphasize the use of low emission resins, including ultra-low-emitting formaldehyde and no added formaldehyde resin systems. As facilities conduct repeat testing, they may find that the inlet concentration of formaldehyde and methanol from their pressing operations has dropped if they are now using a different, lower-HAP resin system to comply with the CARB and TSCA standards. The decrease in inlet concentration may allow for use of the PBCO without an add-on control device providing a compliance option in addition to the current add-on control device compliance option. While the CARB and TSCA standards are a ''development'' within the context of CAA section 112(d)(6), these rules do not necessitate revision of the previously-promulgated PCWP emission standards because the promulgated PCWP emission standards already include the PBCO provisions for pollution prevention measures such as lower-HAP resins.

The PCWP NESHAP also contains work practice standards for selected process units in Table 3 to 40 CFR part 63, subpart DDDD; however, the EPA did not identify any developments in practices, processes, or controls for these units beyond those identified in the originally-promulgated PCWP NESHAP. Overall, the EPA's review of the developments in technology for the process units subject to the PCWP NESHAP did not reveal any changes that require revisions to the emission standards. As discussed above, the PCWP rule was promulgated with multiple options for reducing HAP emissions to demonstrate compliance with the standard. The EPA found that facilities are using each type of control system or pollution prevention measure that was anticipated when the PCWP emissions standards were promulgated. However, the EPA did not identify any developments in practices, processes, or controls for these units beyond those identified in the originally-promulgated PCWP NESHAP. Therefore, the EPA proposes that no revisions to the PCWP NESHAP are necessary pursuant to CAA section 112(d)(6). Additional details on our technology review can be found in the memorandum, *Technology Review for the Plywood and Composite Wood Products NESHAP,* which is available in the docket for this action.

D. What other actions are we proposing?

In addition to the proposed actions described above, the EPA is proposing additional revisions to the NESHAP. The EPA is proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. The EPA is also proposing various other changes, including addition of electronic reporting, addition of a repeat testing requirement, revisions to parameter monitoring requirements, and other technical and editorial changes. Our analyses and proposed changes related to these issues are discussed below.

1. SSM

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

The EPA is proposing the elimination of the SSM exemption in this rule which appears at 40 CFR 63.2250. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing standards in this rule that apply at all times. The EPA is also proposing several revisions to Table 10 (the General Provisions Applicability Table) as is explained in more detail below. For example, the EPA is proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. The EPA is also proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below. As discussed in section IV.E of this preamble, facilities will have 6 months (180 days) after the effective date of the final rule to transition from use of the SSM exemption to compliance without the exemption beginning on the 181st day after the effective date of the amendments. A 5th column to Table 10 of 40 CFR part 63, subpart DDDD was added to clearly indicate which requirements apply before, and then on and after the date 181 days after the effective date. See section IV.E for more discussion of the compliance date.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. The EPA is specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has proposed alternate standards for specific periods. The EPA collected information with the PCWP ICR to use in determining whether applying the standards applicable under normal operations would be problematic for PCWP facilities during startup and shutdown. Based on the information collected, facilities can meet the PCWP compliance options, operating requirements, and work practices at all times with two exceptions during periods of startup and shutdown (discussed further below). Facilities operating control systems generally operate the control systems while the process unit(s) controlled are started up and shutdown. For example, RTOs and RCOs are warmed to their operating temperature set points using auxiliary fuel before the process unit(s) controlled startup and the oxidizers continue to maintain their temperature until the process unit(s) controlled shutdown. Biofilters operate within a biofilter bed temperature range that will be more easily achieved during startup and shutdown with changes in biofilter bed temperature operating range discussed in section IV.D.

The two situations where standards for normal operation cannot be met during startup and shutdown are during safety-related shutdowns and

pressurized refiner startups and shutdowns. The EPA is proposing work practice standards in Table 3 to 40 CFR part 63, subpart DDDD to apply during these times to ensure that a CAA section 112 standard applies continuously. Work practices are appropriate during safety-related shutdowns and pressurized refiner startup/shutdown because it is not technically feasible to capture and route emissions to a control device during these periods, nor is it technically or economically feasible to measure emissions during the brief periods when these situations occur (*i.e.,* less than the 1-hour test runs or 3 hours required for a full test). It is particularly infeasible to measure emissions from safety-related shutdowns because these shutdowns are unplanned.

Safety-related shutdowns differ from routine shutdowns that allow facilities to continue routing process unit emissions to the control device until the process unit is shut down. Safety-related shutdowns occur often enough that they are also distinguished from malfunctions which are, by definition, infrequent. In addition, the PCWP process shuts down when these events are triggered. Safety-related shutdowns must occur rapidly in the event of unsafe conditions such as a suspected fire in a process unit heating flammable wood material. When unsafe conditions are detected, facilities must act quickly to shut off fuel flow (or indirect process heat) to the system, cease addition of raw materials (*e.g.,* wood furnish, resin) to the process units, purge wood material and gases from the process unit, and isolate equipment to prevent loss of property or life and protect workers from injury. Because it is unsafe to continue to route process gases to the control system, the control system will be bypassed, in many cases automatically through a system of interlocks designed to prevent dangerous conditions from occurring. The EPA is proposing to define ''safety-related shutdowns'' in 40 CFR 63.2292, and to add a work practice for these shutdown events. The proposed work practice requires facilities to follow documented site-specific procedures such as use of automated controls or other measures developed to protect workers and equipment to ensure that the flow of raw materials (such as furnish or resin) and fuel or process heat (as applicable) ceases and that material is removed from the process unit(s) as expeditiously as possible given the system design. These actions are taken by all (including the best-performing) facilities when safety-related shutdowns occur.

Pressurized refiners typically operate in MDF and dry-process hardboard mills where they discharge refined furnish and exhaust gases from refining directly into a primary tube dryer. Pressurized refiners are unable to vent through the dryer to the control system (*i.e.,* the dryer control system) for a brief time after they are initially fed wood material during startup or as wood material clears the refiner during shutdown because they are not producing useable furnish suitable for drying. During this time, instead of the pressurized refiner output being discharged into the dryer, exhaust is vented to the atmosphere and the wood is directed to storage for recycling back into the refining process once it is running steadily. Information from the PCWP industry indicates that no resin is mixed with the off-specification material and that the time periods are short (*i.e.,* no more than 15 minutes) before the pressurized refiner begins to discharge wood furnish and exhaust through the dryer. Information collected through the ICR indicates a range of pressurized refiner startup times before wood furnish is introduced into the system (*e.g.,* up to 4 hours) and that up to 45 minutes is required to shut down the pressurized refiner including time after the wood clears the system. Hence, the time when off-specification material is produced (when emissions are beginning to be generated during startup or diminishing during shutdown) is only a fraction of the pressurized refiner startup and shutdown time. Based on this information, the EPA is proposing a work practice requirement to apply during pressurized refiner startup and shutdown that limits the amount of time (and, thus, emissions) when wood is being processed through the system while exhaust is not routed through the dryer to its control system. The proposed work practice requires facilities to route exhaust gases from the pressurized refiner to its control system no later than 15 minutes after furnish is fed to the pressurized refiner when starting up and no more than 15 minutes after furnish ceases to be fed to the pressurized refiner when shutting down. This practice is consistent with how the best-performing facilities complete startup and shutdown of pressurized refiners.

The new definition in 40 CFR 63.2292 and the new work practice standards in Table 3 of 40 CFR part 63, subpart DDDD are designed to address safety-related shutdowns and refiner startup/shutdown periods. Facilities have ample profit-incentive to keep the periods when these work practice standards will be in effect as short as possible because they are unable to produce usable product during safety-related shutdowns or pressurized refiner startup/shutdown periods.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (Definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Under section CAA 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in section CAA 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *U.S. Sugar Corp,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of

various malfunctions that might occur. *Id.* at 608 (''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances''). As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' '') See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from pressure relief devices or emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the best performers. 80 FR 75178, 75211–14 (December 1, 2015). The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. The EPA also encourages commenters to provide any such information.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused, in part, by poor maintenance or careless operation per 40 CFR 63.2 (Definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, section 112, is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

a. General Duty (40 CFR 63.2250)

The EPA is proposing to revise the General Provisions table (Table 10) entry for 40 CFR 63.6(e)(1) and (2) by redesignating it as 40 CFR 63.6(e)(1)(i) and changing the ''yes'' in column 4 to a ''no'' in column 5 which was added to specify requirements on and after the date 181 days after the effective date of the final amendments. Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. The EPA is proposing instead to add general duty regulatory text at 40 CFR 63.2250 that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.2250 eliminates that language from 40 CFR 63.6(e)(1).

The EPA is also proposing to revise the General Provisions table (Table 10) by adding an entry for 40 CFR 63.6(e)(1)(ii) and including a ''no'' in column 5. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.2250.

b. SSM Plan

The EPA is proposing to revise the General Provisions table (Table 10) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 4 to a ''no'' in column 5. Generally, the paragraphs under 40 CFR 63.6(e)(3) require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

c. Compliance With Standards

The EPA is proposing to revise the General Provisions table (Table 10) entry for 40 CFR 63.6(f)(1) by changing

the ''yes'' in column 4 to a ''no'' in column 5. The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

The EPA is proposing to revise the General Provisions table (Table 10) entry for 40 CFR 63.6(h)(1) through (9) by redesignating it as 40 CFR 63.6(h)(1) and changing the ''NA'' in column 4 to a ''no'' in column 5. The current language of 40 CFR 63.6(h)(1) exempts sources from opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

d. Performance Testing (40 CFR 63.2262)

The EPA is proposing to revise the General Provisions table (Table 10) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 4 to a ''no'' in column 5. Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.2262(a)–(b). The performance testing requirements the EPA is proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption. The proposed performance testing provisions remove reference to 40 CFR 63.7(e)(1), reiterate the requirement that was already included in the PCWP rule to conduct emissions tests under representative operating conditions, and clarify that representative operating conditions excludes periods of startup and shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions are representative. Section 63.7(e) requires that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' upon request but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

The definition of ''representative operating conditions'' in 40 CFR 63.2292 is also proposed to be clarified to exclude periods of startup and shutdown. Representative operating conditions include a range of operating conditions under which the process unit and control device typically operate and are not limited to conditions of optimal performance of the process unit and control device.

e. Monitoring

The EPA is proposing to revise the General Provisions table (Table 10) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 4 to a ''no'' in column 5. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

The EPA is proposing to revise the General Provisions table (Table 10) by adding an entry for 40 CFR 63.8(d)(3) and including a ''no'' in column 5. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is proposing to add to the rule at 40 CFR 63.2282(f) text that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan required under 40 CFR 63.8(d)(2).''

f. Recordkeeping (40 CFR 63.2282)

The EPA is proposing to revise the General Provisions table (Table 10) entry for 40 CFR 63.10(b)(2)(i) through (iv) by redesignating it as 40 CFR 63.10(b)(2)(i) and changing the ''yes'' in column 4 to a ''no'' in column 5. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. The EPA is instead proposing to add recordkeeping requirements to 40 CFR 63.2282(a). When a source is subject to a different standard during startup and shutdown, it will be important to know when such startup and shutdown periods begin and end to determine compliance with the appropriate standard. Thus, the EPA is proposing to add language to 40 CFR 63.2282(a) requiring that sources subject to an emission standard during startup or shutdown that differs from the emission standard that applies at all other times must report the date, time, and duration of such periods.

The EPA is proposing to revise the General Provisions table (Table 10) by adding an entry for 40 CFR 63.10(b)(2)(ii) and including a ''no'' in column 5. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.2282(a). The regulatory text the EPA is proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.2282(a) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

The EPA is proposing to revise the General Provisions table (Table 10) by adding an entry for 40 CFR 63.10(b)(2)(iv) and including a ''no'' in column 5. When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer

appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.2282(a).

The EPA is proposing to revise the General Provisions table (Table 10) by adding 40 CFR 63.10(b)(2)(v) to the entry for 40 CFR 63.10(b)(2)(iv) and including a ''no'' in column 5. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

The EPA is proposing to revise the General Provisions table (Table 10) by adding an entry for 40 CFR 63.10(c)(15) and including a ''no'' in column 5. The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

g. Reporting (40 CFR 63.2281)

The EPA is proposing to revise the General Provisions table (Table 10) entry for 40 CFR 63.10(d)(5) by redesignating it as 40 CFR 63.10(d)(5)(i) and changing the ''yes'' in column 4 to a ''no'' in column 5. Section 63.10(d)(5)(i) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.2281(d) and (e). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. The EPA is proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semiannual compliance report already required under this rule. The EPA is proposing that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

The EPA will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate the cross-reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

The EPA is proposing to revise the General Provisions table (Table 10) by adding an entry for 40 CFR 63.10(d)(5)(ii) and including a ''no'' in column 5. Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdowns, and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. The EPA will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

2. Electronic Reporting

The EPA is proposing that owners and operators of PCWP facilities submit electronic copies of required performance test reports, performance evaluation reports for continuous monitoring systems (CMS) measuring relative accuracy test audit (RATA) pollutants (*i.e.,* total hydrocarbon monitors), selected notifications, and semiannual reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID No. EPA–HQ–OAR–2016–0243. The proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [27] at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. Similarly, performance evaluation results of CMS measuring RATA pollutants that are supported by the ERT at the time of the test must be submitted in the format generated through the use of the ERT and other performance evaluation results be submitted in PDF using the attachment module of the ERT.

For the PCWP semiannual report, the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed template for this report is included in the docket for this rulemaking.[28] The EPA specifically requests comment on the content, layout, and overall design of the template. In addition, the EPA is proposing to require future initial notifications developed according to 40 CFR 63.2280(b) and notifications of compliance status developed according to 40 CFR 63.2280(d) to be uploaded in CEDRI in a user-specified (*e.g.,* PDF) format.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. The situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI which precludes an owner or operator from accessing the system and submitting required reports is addressed in 40 CFR 63.2281(k). The situation

[27] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[28] See *40 CFR part 63, subpart DDDD—Plywood and Composite Wood Products Semiannual Compliance Reporting Spreadsheet Template,* available at Docket ID No. EPA–HQ–OAR–2016–0243.

where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit a report electronically as required by this rule is addressed in 40 CFR 63.2281(l). Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [29] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [30] developed in response to the White House's Digital Government Strategy.[31] For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in Docket ID No. EPA–HQ–OAR–2016–0243.

3. Repeat Emissions Testing

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the emissions testing requirements of 40 CFR part 63, subpart DDDD, and is proposing to require facilities complying with the standards in Table 1B of 40 CFR part 63, subpart DDDD using an add-on control system other than a biofilter to conduct repeat emissions performance testing every 5 years. Currently, facilities operating add-on controls are required to conduct an initial performance test by the date specified in 40 CFR 63.2261(a). In addition to the initial performance test, process units controlled by biofilters are already required by the PCWP NESHAP to conduct repeat performance testing every 2 years. Periodic performance tests for all types of control systems are already required by permitting authorities for many facilities. Further, the EPA believes that requiring repeat performance tests will help to ensure that control systems are properly maintained over time. As proposed in Table 7 to 40 CFR part 63, subpart DDDD (row 7) the first of the repeat performance tests would be required to be conducted within 3 years of the effective date of the revised standards or within 60 months following the previous performance test, whichever is later, and thereafter within 5 years (60 months) following the previous performance test. Section IV.E of this preamble provides more information on compliance dates. We specifically request comment on the proposed repeat testing requirements.

4. Biofilter Bed Temperature

Facilities using a biofilter to comply with the PCWP NESHAP must monitor biofilter bed temperature and maintain the 24-hour block biofilter bed temperature within the range established during performance testing showing compliance with the emission limits. The upper and lower limits of the biofilter bed temperature are currently required to be established as the highest and lowest 15-minute average bed temperatures, respectively, during the three test runs. Facilities may conduct multiple performance tests to expand the biofilter bed operating temperature range. See 40 CFR 63.2262(m).

The EPA has become aware that multiple facilities are having difficulty with the PCWP biofilter bed temperature monitoring requirements as originally promulgated. Biofilter bed temperature is affected by ambient temperature. Diurnal and seasonal ambient temperature fluctuations do not necessarily impact the ability of the biofilter to reduce HAP emissions because biofilters reduce HAP (*e.g.,* formaldehyde) emissions over a wide range of bed temperatures. Facilities have indicated they are not able to schedule performance tests on the warmest and coolest days of each season because test firms must plan and mobilize for tests weeks in advance and facilities must notify their delegated authority 60 days before conducting a performance test. For example, facilities may schedule a test in the winter with the intent of measuring emissions during the coldest conditions in which a biofilter performs, only to find that the weather changes on the test date to a warmer than expected ambient temperature. In consideration of this issue, the EPA reviewed biofilter temperature monitoring data, semiannual compliance reports, and test data showing that formaldehyde reductions in compliance with emission standards were achieved at a wide range of biofilter bed temperatures. The EPA is proposing to amend 40 CFR 63.2262(m)(1) to add a 5-percent variability margin to the biofilter bed temperature upper and lower limits established during emissions testing. A 5-percent variability margin addresses the issues observed in the 24-hour block average biofilter temperature monitoring data reviewed. The EPA maintains that the currently-required 24-hour block averaging time is appropriate to monitor for harsh swings in biofilter bed temperature that could impact the viability of the microbial population. The 5-percent variability margin provides flexibility needed to account for small variations in biofilter bed temperature unlikely to impact the microbial population.

While the proposed regulatory language does not explicitly state that facilities can use the 5-percent variability margin to expand the range of the biofilter bed temperature limit established though previously conducted performance tests, the EPA anticipates that facilities currently having difficulty maintaining the biofilter bed temperature limits may wish to adjust their temperature limits. As originally promulgated, 40 CFR 63.2262(m)(1) states that facilities may base their biofilter bed temperature range on values recorded during previous performance tests provided that the data used to establish the temperature ranges have been obtained using the required test methods; and that facilities using data from previous performance tests must certify that the

[29] The EPA's *Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[30] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[31] *Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012.* Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

biofilter and associated process unit(s) have not been modified since the test. This provision (if met) clarifies that facilities can adjust their previously established biofilter temperature range to include the 5-percent variability margin, if desired. Facilities are encouraged to demonstrate the broadest limits of their compliant temperature operating parameters with their regular performance tests.

5. Thermocouple Calibration

Facilities with controlled sources subject to the PCWP NESHAP that use regenerative thermal or catalytic oxidizers to comply with the standard are required to establish a minimum operating temperature during performance testing then maintain a 3-hour block average firebox temperature above the minimum temperature established during the performance test to demonstrate ongoing compliance. Facilities with controlled sources subject to the PCWP NESHAP that use biofilters to comply with the standard are required to establish an operating temperature range during performance testing then maintain a 24-hour block average temperature within the temperature range established during the performance test to demonstrate ongoing compliance. (40 CFR part 63, subpart DDDD, Table 2). Facilities with dry rotary dryers are required to maintain their 24-hour block average inlet dryer temperature less than 600 degrees Fahrenheit. (40 CFR part 63, subpart DDDD, Table 3). Thermocouples are used to measure the temperature in the firebox, the biofilter, and the dry rotary dryer. At 40 CFR 63.2269(b)(4), the PCWP NESHAP currently requires conducting an electronic calibration of the temperature monitoring device at least semiannually according to the procedures in the manufacturer's owner's manual. Facilities subject to the standard have explained to the EPA that they are not aware of a thermocouple manufacturer that provides procedures or protocols for conducting electronic calibration of thermocouples. Facilities have reported that since they cannot calibrate their thermocouples, the alternative is to replace them and requested that an alternative approach to the current requirement in 40 CFR 63.2269(b)(4) be considered.

The EPA is proposing to modify 40 CFR 63.2269(b)(4) to allow multiple alternative approaches to thermocouple calibration. The first alternative would allow use of a National Institute of Standards and Technology (NIST) traceable temperature measurement device or simulator to confirm the accuracy of any thermocouple placed into use for at least one semi-annual period, where the accuracy of the temperature measurement must be within 2.5 percent of the temperature measured by the NIST traceable device or 5 °F, whichever is greater. The second alternative would be to have the thermocouple manufacturer certify the electrical properties of the thermocouple. The third alternative would codify the common practice of replacing thermocouples every 6 months. The fourth alternative would be to permanently install a redundant temperature sensor as close as practicable to the process temperature sensor. The redundant sensors must read within 30 °F of each other for thermal and catalytic oxidizers, within 5 °F for biofilters, and within 20 °F for dry rotary dryers. The EPA plans to maintain the option of allowing facilities to follow calibration procedures developed by the thermocouple manufacturer when thermocouple manufacturers develop calibration procedures for their products.

6. Non-HAP Coating Definition

The PCWP NESHAP requires use of ''non-HAP coatings'' for ''Group 1 miscellaneous coating operations'' as defined in 40 CFR 63.2292. As defined, PCWP non-HAP coatings exclude coatings with 0.1 percent or more (by mass) of carcinogenic HAP. The current ''non-HAP coating'' definition in 40 CFR 63.2292 references Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) which was amended (77 FR 17574, March 26, 2012) and no longer readily defines which compounds are carcinogens. The EPA is proposing to replace the references to OSHA-defined carcinogens and 29 CFR 1910.1200(d)(4) in the PCWP ''non-HAP coating'' definition with a reference to a new appendix B to 40 CFR part 63, subpart DDDD, that lists HAP that must be below 0.1 percent by mass for a PCWP coating to be considered as non-HAP coating. The HAP listed in the proposed appendix B to 40 CFR part 63, subpart DDDD, were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[32] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

7. Technical and Editorial Changes

The following lists additional proposed changes that address technical and editorial corrections:

- The clarifying reference to ''SSM plans'' in 40 CFR 63.2252 was removed because SSM plans will no longer be applicable;
- The redundant reference in 40 CFR 63.2281(c)(6) for submittal of performance test results with the compliance report was eliminated because performance test results will be required to be electronically reported;
- The EPA revised 40 CFR 63.2281(d)(2) and added language to 40 CFR 63.2281(e)(12)–(13) to makes these sections more consistent to facilitate electronic reporting;
- A provision stating that the EPA retains authority to approve alternatives to electronic reporting was added to 40 CFR 63.2291(c)(5);
- Cross-references to the 40 CFR part 60 appendices containing test methods were updated in Table 4 of the rule;
- Cross-references were updated throughout the rule, as needed, to match the proposed changes;
- Cross-references to 40 CFR 63.14 to remove outdated paragraph references were updated;
- The equation number cross-referenced in the definition of ''MSF'' was corrected; and
- The cross-reference in 40 CFR 63.2290 to include all sections of the General Provisions was updated.

E. What compliance dates are we proposing?

The EPA is proposing that existing affected sources and other affected sources that commenced construction or reconstruction on or before September 6, 2019 must comply with all of the amendments 6 months (180 days) after the effective date of the final rule.[33] For existing sources, the EPA is proposing changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart DDDD. As discussed elsewhere in this preamble, the EPA is proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. The EPA

[32] *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

[33] The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

is also proposing addition of electronic reporting requirements that will require use of a semiannual reporting template once the template has been available on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for 6 months. The EPA's experience with similar industries shows that this sort of regulated facility generally requires a time-period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operations to reflect the revised requirements. From our assessment of the time frame needed for compliance with the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable, and, thus, is proposing that existing affected sources be in compliance with this regulation's revised requirements within 180 days of the regulation's effective date. All existing affected facilities would have to continue to meet the current requirements of this NESHAP until the applicable compliance date of the amended rule. Affected sources that commence construction or reconstruction after September 6, 2019 must comply with all requirements of the subpart, including the amendments being proposed, no later than the effective date of the final rule or upon initial startup, whichever is later.

Also, the EPA is proposing new requirements to conduct repeat performance testing every 5 years for facilities using an add-on control system other than a biofilter (see section IV.D.3 of this preamble). Establishing a compliance date earlier than 3 years for the first repeat performance test can cause scheduling issues as affected sources compete for a limited number of testing contractors. Considering these scheduling issues, the first of the repeat performance tests would be required to be conducted within 3 years after the effective date of the revised standards, or within 60 months following the previous performance test, whichever is later, and thereafter within 5 years (60 months) following the previous performance test. Thus, facilities with relatively new affected sources that recently conducted the initial performance test by the date specified in 40 CFR 63.2261(a) or facilities that were required by their delegated authorities to conduct a performance test to show ongoing compliance with the PCWP standards would have 5 years (60 months) from the previous test before being required to conduct the first of the repeat tests required by the proposed amendment to add repeat testing.

The EPA specifically seeks comment on whether the compliance times described in this section provide enough time for owners and operators to comply with these proposed amendments, and if the proposed time window is not adequate, we request that commenters provide an explanation of specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. The EPA notes that information provided may result in changes to the proposed compliance date.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The EPA has identified 230 facilities that are currently operating and subject to the PCWP NESHAP. This includes 109 facilities manufacturing one or more PCWP products (*e.g.,* plywood, veneer, particleboard, OSB, hardboard, fiberboard, MDF, engineered wood products) and 121 facilities that produce kiln-dried lumber. Sixteen facilities produce PCWP products and kiln-dried lumber. Information on currently operational facilities is included in the *Technology Review for the Plywood and Composite Wood Products NESHAP,* available in the docket for this action. In addition, the EPA is aware of 13 greenfield facilities (four PCWP and nine kiln-dried lumber mills) that recently commenced construction as major sources of HAP emissions. The EPA is projecting that two new OSB mills will be constructed as major sources within the next 5 years, and that existing facilities will add or replace process units during this same time frame. More details on our projections of new sources are available in *Projections of the Number of New and Reconstructed Sources for the Subpart DDDD Technology Review,* in the docket for this action.

B. What are the air quality impacts?

The nationwide baseline HAP emissions from the 230 facilities in the PCWP source category are estimated to be 7,600 tons/year. Emissions of the six compounds defined as ''total HAP'' in the PCWP NESHAP (acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde) make up 96 percent of the nationwide emissions. The proposed amendments include removal of the SSM exemption and addition of repeat emissions testing for controls other than biofilters (which are already require repeat tests). Although the EPA is unable to quantify the emission reduction associated with these changes, we expect that emissions will be reduced by requiring facilities to meet the applicable standard during periods of SSM and that the repeat emissions testing requirements will encourage operation of add-on controls to achieve optimum performance. The EPA is not proposing other revisions to the emission limits that would impact emissions, so there are no quantifiable air quality impacts resulting from the proposed amendments.

C. What are the cost impacts?

No capital costs are estimated to be incurred to comply with the proposed amendments. The costs associated with the proposed amendments are related to recordkeeping and reporting labor costs and repeat performance testing. Because repeat performance testing would be required every 5 years, costs are estimated and summarized over a 5-year period. The nationwide cost of the proposed amendments is estimated to include a one-time cost of $1.3 million for facilities to review the revised rule and make record systems adjustments and a cost of $3.5 million every 5 years for repeat emissions testing. These costs are in 2018 dollars. Another metric for presenting the one-time costs is as a present value (PV), which is a technique that converts a stream of costs over time into a one-time estimate for the present year or other year. The EPA estimates that the PV of costs for this proposal is $5.6 million at a discount rate of 7 percent and $6.9 million at a discount rate of 3 percent. In addition, the EPA presents these costs as an equivalent annualized value (EAV) in order to provide an estimate of annual costs consistent with the present value. The EAV for this proposal is estimated to be $0.9 million at a discount rate of 7 percent and $1.0 million at a discount rate of 3 percent. The PV and EAV cost estimates are in 2016 dollars in part to conform to Executive Order 13771 requirements. For further information on the costs associated with the proposed amendments, see the memorandum, *Cost, Environmental, and Energy Impacts of Regulatory Options for Subpart DDDD,* and the memorandum, *Economic Impact and Small Business Analysis for the Proposed Plywood and Composite Wood Products Risk and Technology Review*

(RTR) NESHAP, both available in the docket for this action.

D. What are the economic impacts?

The EPA conducted an economic impact analysis for this proposal, as detailed in the memorandum titled *Economic Impact and Small Business Analysis for the Proposed Plywood and Composite Wood Risk and Technology Review (RTR) NESHAP,* which is available in the docket for this action. The economic impacts of the proposal are calculated as the percentage of annualized costs incurred by affected ultimate parent owners to their revenues. This ratio provides a measure of the direct economic impact to ultimate parent owners of PCWP facilities while presuming no impact on consumers. The EPA estimates that none of the ultimate parent owners affected by this proposal will incur annualized costs of 1.0 percent or greater of their revenues. Thus, these economic impacts are low for affected companies and the industries impacted by this proposal, and there will not be substantial impacts in the markets for affected products.

E. What are the benefits?

The EPA is not proposing changes to emissions limits, and estimates the proposed changes (*i.e.,* changes to SSM, recordkeeping, reporting, and monitoring) are not economically significant. Because these proposed amendments are not considered economically significant, as defined by Executive Order 12866, and because no emissions reductions were estimated, the EPA did not estimate any benefits from reducing emissions.

VI. Request for Comments

The EPA solicits comments on this proposed action. In addition to general comments on this proposed action, the EPA is also interested in additional data that may improve the risk assessments and other analyses. The EPA is specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/plywood-and-composite-wood-products-manufacture-national-emission.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, the EPA requests that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2016–0243 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). The EPA requests that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/plywood-and-composite-wood-products-manufacture-national-emission.*

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive 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 OMB for review.

B. Executive Order 13771: Reducing Regulation 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)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1984.08. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information is being collected to assure compliance with 40 CFR part 63, subpart DDDD. The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. The information collection activities also include paperwork requirements associated with initial and repeat performance testing and parameter monitoring. The proposed amendments to the rule would eliminate the paperwork requirements associated with the SSM plan and recordkeeping of SSM events and require electronic submittal of performance test results and semiannual compliance reports. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414).

Respondents/affected entities: Owners and operators of facilities subject to 40 CFR part 63, subpart DDDD, that produce plywood, composite wood products, or kiln-dried lumber.

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

Estimated number of respondents: 244 facilities (including existing and new facilities projected to begin reporting during the ICR period).

Frequency of response: The frequency varies depending on the type of response (*e.g.,* initial notification, semiannual compliance report).

Total estimated burden: 39,700 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $6,930,000 (per year), includes $2,365,000 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA at *oira_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 7, 2019. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. Of the 69 ultimate parent entities that are subject to the rule, 28 are small according to the Small Business Administration's small business size standards and standards regarding other entities (*e.g.,* federally recognized tribes). None of the 28 small entities have annualized costs of 1 percent or greater of sales. The EPA has, therefore, concluded that this action will not have a significant impact on a substantial number of small 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. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. No tribal governments own facilities that are impacted by the proposed changes to the NESHAP. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III and IV of this preamble and further documented in the risk report titled *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which can be found in the docket for this action.

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

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

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

This action involves technical standards. The EPA proposes to use the standards currently listed in Table 4 of the rule (40 CFR part 63, subpart DDDD). While the EPA has identified another 18 voluntary consensus standards (VCS) as being potentially applicable to this proposed rule, the EPA has decided not to use these VCS in this rulemaking. The use of these VCS would not be practical due to lack of equivalency, documentation, validation date, and other important technical and policy considerations. See the memorandum titled *Voluntary Consensus Standard Results for NESHAP: Plywood and Composite Wood Products RTR,* in the docket for this proposed rule for the reasons for these determinations.

The EPA proposes to amend 40 CFR 63.14 to incorporate by reference EPA Method 0011 for measurement of formaldehyde. EPA Method 0011 (Revision 0, December 1996) is available in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846. This method was included in the PCWP rule when it was promulgated in 2004.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

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

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

The documentation for this decision is contained in section IV.A.6 of this preamble and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Plywood and Composite Wood Products Source Category,* in the public docket for this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 22, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 is proposed to be amended as follows:

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

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

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

■ 2. Section 63.14 is amended by redesignating paragraphs (n)(7) through (24) as (n)(8) through (25) and adding new paragraph (n)(7) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(n) * * *

(7) SW–846–0011, Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources, Revision 0, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, IBR approved for table 4 to subpart DDDD.

* * * * *

Subpart DDDD—[Amended]

■ 3. Section 63.2233 is amended by revising paragraphs (a)(1) and (2) and paragraph (b) to read as follows:

§ 63.2233 When do I have to comply with this subpart?

(a) * * *

(1) If the initial startup of your affected source is before September 28, 2004, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart no later than September 28, 2004, except as otherwise specified in §§ 63.2250, 63.2280(b) and (d), 63.2281(b)(6), 63.2282(a)(2) and Tables 3, 7, 9, and 10 to this subpart.

(2) If the initial startup of your affected source is after September 28, 2004, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart upon initial startup of your affected source, except as otherwise specified in §§ 63.2250, 63.2280(b) and (d), 63.2281(b)(6), 63.2282(a)(2) and Tables 3, 7, 9, and 10 to this subpart.

(b) If you have an existing affected source, you must comply with the compliance options, operating requirements, and work practice requirements for existing sources no later than October 1, 2007, except as otherwise specified in §§ 63.2240(c)(2)(vi)(A), 63.2250, 63.2280(b) and (d), 63.2281(b)(6) and (c)(4), 63.2282(a)(2) and Tables 3, 7, 9, and 10 to this subpart.

* * * * *

■ 4. Section 63.2240 is amended by revising paragraph (c)(2)(vi)(A) to read as follows:

§ 63.2240 What are the compliance options and operating requirements and how must I meet them?

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(A) Before [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**], emissions during periods of startup, shutdown, and malfunction as described in the startup, shutdown, and malfunction plan (SSMP). On and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**], emissions during safety-related shutdowns or pressurized refiner startups and shutdowns.

* * * * *

■ 5. Section 63.2250 is amended by:

■ a. Adding two sentences to the end of paragraph (a);

■ b. Revising paragraph (b);

■ c. Revising paragraph (c); and

■ d. Adding new paragraphs (e) through (g).

The revisions and additions read as follows:

§ 63.2250 What are the general requirements?

(a) * * * For any affected source that commences construction or reconstruction after September 6, 2019, this paragraph does not apply on and after [**DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] or initial startup of the affected source, whichever is later. For all other affected sources, this paragraph does not apply on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**].

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment according to the provisions in § 63.6(e)(1)(i). For any affected source that commences construction or reconstruction after September 6, 2019, this paragraph does not apply on and after [**DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] or initial startup of the affected source, whichever is later. For all other affected sources, this paragraph does not apply on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**].

(c) You must develop a written SSMP according to the provisions in § 63.6(e)(3). For any affected source that commences construction or reconstruction after September 6, 2019, this paragraph does not apply on and after [**DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] or initial startup of the affected source, whichever is later. For all other affected sources, this paragraph does not apply on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**].

* * * * *

(e) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 10 to this subpart.

(f) Upon [**DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] or initial startup of the affected source, whichever is later, for affected sources that commenced construction or reconstruction after September 6, 2019, and on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] for all other affected sources, you must be in compliance with the compliance options, operating requirements, and the work practice requirements in this subpart when the process unit(s) subject to the compliance options, operating requirements, and work practice requirements are operating, except as specified in paragraphs (f)(1) through (4) of this section.

(1) Prior to process unit initial startup.

(2) During safety-related shutdowns conducted according to the work practice requirement in Table 3 to this subpart.

(3) During pressurized refiner startup and shutdown according to the work practice requirement in Table 3 to this subpart.

(4) You must minimize the length of time when compliance options and operating requirements in this subpart are not met due to the conditions in paragraphs (f)(2) and (3) of this section.

(g) For affected sources that commenced construction or reconstruction after September 6, 2019 and for all other affected sources on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**], you must always operate and maintain your affected source, including air pollution control and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is

operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 6. Section 63.2252 is revised to read as follows:

§ 63.2252 What are the requirements for process units that have no control or work practice requirements?

For process units not subject to the compliance options or work practice requirements specified in § 63.2240 (including, but not limited to, lumber kilns), you are not required to comply with the compliance options, work practice requirements, performance testing, monitoring, and recordkeeping or reporting requirements of this subpart, or any other requirements in subpart A of this part, except for the initial notification requirements in § 63.9(b).

■ 7. Section 63.2262 is amended by revising paragraphs (a), (b), (m)(1) and (n)(1) to read as follows:

§ 63.2262 How do I conduct performance tests and establish operating requirements?

(a) You must conduct each performance test according to the requirements in paragraphs (b) through (o) of this section, and according to the methods specified in Table 4 to this subpart.

(b) *Periods when performance tests must be conducted.* You must conduct each performance test based on representative performance (*i.e.,* performance based on representative operating conditions as defined in § 63.2292) of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You must describe representative operating conditions in your performance test report for the process and control systems and explain why they are representative. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions are representative. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(m) * * *

(1) During the performance test, you must continuously monitor the biofilter bed temperature during each of the required 1-hour test runs. To monitor biofilter bed temperature, you may use multiple thermocouples in representative locations throughout the biofilter bed and calculate the average biofilter bed temperature across these thermocouples prior to reducing the temperature data to 15-minute averages for purposes of establishing biofilter bed temperature limits. The biofilter bed temperature range must be established as the temperature values 5 percent below the minimum and 5 percent above the maximum 15-minute biofilter bed temperatures monitored during the three test runs. You may base your biofilter bed temperature range on values recorded during previous performance tests provided that the data used to establish the temperature ranges have been obtained using the test methods required in this subpart. If you use data from previous performance tests, you must certify that the biofilter and associated process unit(s) have not been modified subsequent to the date of the performance tests. Replacement of the biofilter media with the same type of material is not considered a modification of the biofilter for purposes of this section.

* * * * *

(n) * * *

(1) During the performance test, you must identify and document the process unit controlling parameter(s) that affect total HAP emissions during the three-run performance test. The controlling parameters you identify must coincide with the representative operating conditions you describe according to paragraph (b) of this section. For each parameter, you must specify appropriate monitoring methods, monitoring frequencies, and for continuously monitored parameters, averaging times not to exceed 24 hours. The operating limit for each controlling parameter must then be established as the minimum, maximum, range, or average (as appropriate depending on the parameter) recorded during the performance test. Multiple three-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

* * * * *

■ 8. Section 63.2269 is amended by revising paragraph (b)(4) to read as follows.

§ 63.2269 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(b) * * *

(4) Validate the temperature sensor's reading at least semiannually using the requirements of paragraph (b)(4)(i), (ii), (iii), (iv), or (v) of this section:

(i) Compare measured readings to a National Institute of Standards and Technology (NIST) traceable temperature measurement device or simulate a typical operating temperature using a NIST traceable temperature simulation device. When the temperature measurement device method is used, the sensor of the NIST traceable calibrated device must be placed as close as practicable to the process sensor, and both devices must be subjected to the same environmental conditions. The accuracy of the temperature measured must be 2.5 percent of the temperature measured by the NIST traceable device or 5 °F, whichever is greater.

(ii) Follow applicable procedures in the thermocouple manufacturer owner's manual.

(iii) Request thermocouple manufacturer to certify or re-certify electromotive force (electrical properties) of the thermocouple.

(iv) Replace thermocouple with a new certified thermocouple in lieu of validation.

(v) Permanently install a redundant temperature sensor as close as practicable to the process temperature sensor. The sensors must yield a reading within 30 °F of each other for thermal oxidizers and catalytic oxidizers; within 5 °F of each other for biofilters; and within 20 °F of each other for dry rotary dryers.

* * * * *

■ 9. Section 63.2270 is amended by revising paragraph (c) to read as follows:

§ 63.2270 How do I monitor and collect data to demonstrate continuous compliance?

* * * * *

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities; or data recorded during periods of safety-related shutdown, pressurized refiner startup or shutdown, or control device downtime covered in any approved routine control device maintenance exemption in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control system.

* * * * *

§ 63.2271 [Amended]

■ 10. Section 63.2271 is amended by removing and reserving paragraph (b)(2).

■ 11. Section 63.2280 is amended by revising paragraph (b), paragraph (d) introductory text, and paragraph (d)(2) to read as follows:

§ 63.2280 What notifications must I submit and when?

* * * * *

(b) You must submit an Initial Notification no later than 120 calendar days after September 28, 2004, or after initial startup, whichever is later, as specified in § 63.9(b)(2). Initial Notifications required to be submitted after [**DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] for affected sources that commence construction or reconstruction after September 6, 2019 and on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] for all other affected sources must be submitted following the procedure specified in § 63.2281(h), (k), and (l).

* * * * *

(d) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 4, 5, and 6 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h)(2)(ii). After [**DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] for affected sources that commence construction or reconstruction after September 6, 2019 and on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] for all other affected sources, submit all subsequent Notifications of Compliance Status following the procedure specified in § 63.2281(h), (k), and (l).

* * * * *

(2) For each initial compliance demonstration required in Tables 5 and 6 to this subpart that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test.

* * * * *

■ 12. Section 63.2281 is amended by:

■ a. Revising paragraph (b) introductory text;

■ b. Adding paragraph (b)(6);

■ c. Revising paragraph (c) introductory text;

■ d. Revising paragraph (c)(4);

■ e. Removing and reserving paragraph (c)(6);

■ f. Revising paragraph (d)(2);

■ g. Revising the first sentence of paragraph (e) introductory text;

■ h. Revising paragraph (e)(2);

■ i. Adding paragraphs (e)(12) and (13); and

■ j. Adding paragraphs (h) through (l).

The revisions and additions read as follows:

§ 63.2281 What reports must I submit and when?

* * * * *

(b) Unless the EPA Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 to this subpart and as specified in paragraphs (b)(1) through (6) of this section.

* * * * *

(6) After [**DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] for affected sources that commenced construction or reconstruction after September 6, 2019 and on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] for all other affected sources, submit all subsequent reports following the procedure specified in paragraph (h), (k) and (l) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (7) of this section.

* * * * *

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information specified in § 63.10(d)(5)(i) before [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] for affected sources that commenced construction or reconstruction before September 6, 2019.

* * * * *

(d) * * *

(2) Information on the date, time, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from a compliance option or operating requirement occurring at an affected source where you are using a CMS to comply with the compliance options and operating requirements in this subpart, you must include the information in paragraphs (c)(1) through (6) and paragraphs (e)(1) through (13) of this section. * * *

* * * * *

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks.

* * * * *

(12) An estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(13) The total operating time of each affected source during the reporting period.

* * * * *

(h) *Submitting reports electronically.* If you are required to submit reports following the procedure specified in this paragraph, you must submit reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). For semiannual compliance reports required in this section and Table 9 (row 1) of this subpart, you must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart once the reporting template has been available on the CEDRI website for 6 months. The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 6 months you must begin submitting all subsequent reports via CEDRI. Initial Notifications developed according to § 63.2280(b) and Notifications of Compliance Status developed according to § 63.2280(d) may be uploaded in a user-specified format such as portable document format (PDF). The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to

U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(i) *Performance tests.* Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (i)(1) through (3) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

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

(j) *Performance evaluations.* Within 60 days after the date of completing each continuous monitoring system (CMS) performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedures specified in paragraphs (j)(1) through (3) of this section.

(1) *Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* Submit the results of the performance evaluation to the EPA via CEDRI, which can be accessed through the EPA's CDX. The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on the EPA's ERT website.

(2) *Performance evaluations of CMS measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* The results of the performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

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

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

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

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

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

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

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

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

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

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

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

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

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

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

(2) You must submit notification to the Administrator in writing as soon as

possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

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

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

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

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

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

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 13. Section 63.2282 is amended by:

■ a. Revising paragraph (a)(2);

■ b. Revising paragraph (c)(2); and

■ c. Adding paragraph (f).

The revisions and additions read as follows:

§ 63.2282 What records must I keep?

(a) * * *

(2) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction for affected sources that commenced construction or reconstruction before September 6, 2019. After [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] for affected sources that commenced construction or reconstruction after September 6, 2019 and on and after [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] for all other affected sources, the records related to startup and shutdown, failures to meet the standard, and actions taken to minimize emissions, specified in paragraphs (a)(2)(i) through (iv) of this section.

(i) Record the date, time, and duration of each startup and/or shutdown period, including the periods when the affected source was subject to the standard applicable to startup and shutdown;

(ii) In the event that an affected unit fails to meet an applicable standard, record the number of failures; for each failure, record the date, time, cause and duration of each failure;

(iii) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions; and

(iv) Record actions taken to minimize emissions in accordance with § 63.2250(g), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(c) * * *

(2) Previous (*i.e.,* superseded) versions of the performance evaluation plan, with the program of corrective action included in the plan required under § 63.8(d)(2).

* * * * *

(f) You must keep the written CMS quality control procedures required by § 63.8(d)(2) on record for the life of the affected source or until the affected source is no longer subject to the provisions of this subpart, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you must keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

■ 14. Section 63.2283 is amended by adding paragraph (d) to read as follows:

§ 63.2283 In what form and how long must I keep my records?

* * * * *

(d) Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 15. Section 63.2290 is revised to read as follows:

§ 63.2290 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

■ 16. Section 63.2291 is amended by revising paragraph (c) introductory text and adding paragraph (c)(5) to read as follows:

§ 63.2291 Who implements and enforces this subpart?

* * * * *

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

* * * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 17. Section 63.2292 is amended by:

■ a. Revising the definitions of ''MSF,'' ''non-HAP coating'' and ''representative operating conditions'';

■ b. Adding the definition of ''safety-related shutdown'' in alphabetical order; and

■ c. Removing the definition of ''startup, shutdown, and malfunction plan.''

The revisions and additions read as follows:

§ 63.2292 What definitions apply to this subpart?

* * * * *

MSF means thousand square feet (92.9 square meters). Square footage of panels is usually measured on a thickness basis, such as ⅜-inch, to define the total volume of panels. Equation 3 of § 63.2262(j) shows how to convert from one thickness basis to another.

* * * * *

Non-HAP coating means a coating with HAP contents below 0.1 percent by mass for the carcinogenic HAP compounds listed in Appendix B to this subpart and below 1.0 percent by mass for other HAP compounds.

* * * * *

Representative operating conditions means operation of a process unit during performance testing under the conditions that the process unit will typically be operating in the future, including use of a representative range of materials (*e.g.,* wood material of a typical species mix and moisture content or typical resin formulation) and representative operating temperature range. Representative operating conditions exclude periods of startup and shutdown.

* * * * *

Safety-related shutdown means an unscheduled shutdown of a process unit subject to a compliance option in Table 1B to this subpart (or a process unit with HAP control under an emissions averaging plan developed according to § 63.2240(c)) during which time emissions from the process unit cannot be safely routed to the control system in place to meet the compliance options or operating requirements in this subpart without imminent danger to the process, control system, or system operator.

* * * * *

■ 18. Table 3 to Subpart DDDD is revised to read as follows:

TABLE 3 TO SUBPART DDDD OF PART 63—WORK PRACTICE REQUIREMENTS

For the following process units at existing or new affected sources . . .	You must . . .
(1) Dry rotary dryers	Process furnish with a 24-hour block average inlet moisture content of less than or equal to 30 percent (by weight, dry basis); AND operate with a 24-hour block average inlet dryer temperature of less than or equal to 600 °F.
(2) Hardwood veneer dryers	Process less than 30 volume percent softwood species on an annual basis.
(3) Softwood veneer dryers	Minimize fugitive emissions from the dryer doors through (proper maintenance procedures) and the green end of the dryers (through proper balancing of the heated zone exhausts).
(4) Veneer redryers	Process veneer that has been previously dried, such that the 24-hour block average inlet moisture content of the veneer is less than or equal to 25 percent (by weight, dry basis).
(5) Group 1 miscellaneous coating operations	Use non-HAP coatings as defined in § 63.2292.
(6) Process units and control systems undergoing safety-related shutdown on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] except as noted in footnote "a" to this table.	Follow documented site-specific procedures such as use of automated controls or other measures that you have developed to protect workers and equipment to ensure that the flow of raw materials (such as furnish or resin) and fuel or process heat (as applicable) ceases and that material is removed from the process unit(s) as expeditiously as possible given the system design.
(7) Pressurized refiners undergoing startup or shutdown on and after [**DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] except as noted in footnote "a" to this table.	Route exhaust gases from the pressurized refiner to its control system no later than 15 minutes after furnish is fed from the pressurized refiner to the tube dryer when starting up, and no more than 15 minutes after furnish ceases to be fed to the pressurized refiner when shutting down.

[a] New or reconstructed affected sources that commenced construction or reconstruction after September 6, 2019 must comply with this requirement beginning on [**DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] or upon initial startup, whichever is later.

■ 19. Table 4 to Subpart DDDD is revised to read as follows:

TABLE 4 TO SUBPART DDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .
(1) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A–1 (as appropriate).
(2) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	determine velocity and volumetric flow rate	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendix A–1 and A–2 to 40 CFR part 60 (as appropriate).
(3) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	conduct gas molecular weight analysis	Method 3, 3A, or 3B in appendix A–2 to 40 CFR part 60 (as appropriate).
(4) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	measure moisture content of the stack gas	Method 4 in appendix A–3 to 40 CFR part 60; OR Method 320 in appendix A to 40 CFR part 63; OR ASTM D6348–03 (IBR, see § 63.14).
(5) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a total HAP as THC compliance option.	measure emissions of total HAP as THC	Method 25A in appendix A–7 to 40 CFR part 60. You may measure emissions of methane using EPA Method 18 in appendix A–6 to 40 CFR part 60 and subtract the methane emissions from the emissions of total HAP as THC.
(6) each process unit subject to a compliance option in table 1A to this subpart; OR for each process unit used in calculation of an emissions average under § 63.2240(c).	measure emissions of total HAP (as defined in § 63.2292).	Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14); OR the NCASI Method ISS/FP–A105.01 (IBR, see § 63.14); OR ASTM D6348–03 (IBR, see § 63.14) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.

TABLE 4 TO SUBPART DDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .
(7) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a methanol compliance option.	measure emissions of methanol	Method 308 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method CI/WP–98.01 (IBR, see § 63.14); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14); OR the NCASI Method ISS/FP–A105.01 (IBR, see § 63.14).
(8) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a formaldehyde compliance option.	measure emissions of formaldehyde	Method 316 in appendix A to 40 CFR part 63; OR Method 320 in appendix A to 40 CFR part 63; OR Method 0011 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication No. SW–846) for formaldehyde (IBR, see § 63.14); OR the NCASI Method CI/WP–98.01 (IBR, see § 63.14); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14); OR the NCASI Method ISS/FP–A105.01 (IBR, see § 63.14).
(9) each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in table 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	meet the design specifications included in the definition of wood products enclosure in § 63.2292; or determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M, to determine capture efficiency (except for wood products enclosures as defined in § 63.2292). Enclosures that meet the definition of wood products enclosure or that meet Method 204 requirements for a permanent total enclosure (PTE) are assumed to have a capture efficiency of 100 percent. Enclosures that do not meet either the PTE requirements or design criteria for a wood products enclosure must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.
(10) each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in table 1A to this subpart.	determine the percent capture efficiency	a TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart. Enclosures that meet the design criteria (1) through (4) in the definition of wood products enclosure, or that meet Method 204 requirements for a PTE (except for the criteria specified in section 6.2 of Method 204) are assumed to have a capture efficiency of 100 percent. Measured emissions divided by the capture efficiency provides the emission rate.
(11) each process unit subject to a compliance option in tables 1A and 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in Table 2 to this subpart.	data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

■ 20. Table 7 to Subpart DDDD is revised to read as follows:

TABLE 7 TO SUBPART DDDD OF PART 63—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(1) Each process unit listed in Table 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on monitoring of operating parameters.	Collecting and recording the operating parameter monitoring system data listed in Table 2 to this subpart for the process unit according to § 63.2269(a) through (b) and § 63.2270; AND reducing the operating parameter monitoring system data to the specified averages in units of the applicable requirement according to calculations in § 63.2270; AND maintaining the average operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to § 63.2262.
(2) Each process unit listed in Tables 1A and 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Compliance options in Tables 1A and 1B to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 of this subpart based on THC CEMS data.	Collecting and recording the THC monitoring data listed in Table 2 to this subpart for the process unit according to § 63.2269(d); AND reducing the CEMS data to 3-hour block averages according to calculations in § 63.2269(d); AND maintaining the 3-hour block average THC concentration in the exhaust gases less than or equal to the THC concentration established according to § 63.2262.
(3) Each process unit using a biofilter	Compliance options in Tables 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Conducting a repeat performance test using the applicable method(s) specified in Table 4 to this subpart within 2 years following the previous performance test and within 180 days after each replacement of any portion of the biofilter bed media with a different type of media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.
(4) Each process unit using a catalytic oxidizer	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Checking the activity level of a representative sample of the catalyst at least every 12 months and taking any necessary corrective action to ensure that the catalyst is performing within its design range.
(5) Each process unit listed in Table 1A to this subpart, or each process unit without a control device used in calculation of an emissions averaging debit under § 63.2240(c).	Compliance options in Table 1A to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on monitoring of process unit controlling operating parameters.	Collecting and recording on a daily basis process unit controlling operating parameter data; AND maintaining the operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to § 63.2262.
(6) Each Process unit listed in Table 1B to this subpart using a wet control device as the sole means of reducing HAP emissions.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Implementing your plan to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere.
(7) Each process unit listed in Table 1B to this subpart using a control device other than a biofilter.	Compliance options in Tables 1B to this subpart.	Conducting a repeat performance test using the applicable method(s) specified in Table 4 to this subpart by [**DATE 3 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER**] or within 60 months following the previous performance test, whichever is later, and thereafter within 60 months following the previous performance test.

■ 21. Table 9 to Subpart DDDD is revised to read as follows:

TABLE 9 TO SUBPART DDDD OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
(1) Compliance report	The information in § 63.2281(c) through (g)	Semiannually according to the requirements in § 63.2281(b).
(2) immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER][a].	(i) Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	(ii) The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.
(3) Performance test report	The information required in § 63.7(g)	According to the requirements of § 63.2281(i).
(4) CMS performance evaluation	The information required in § 63.7(g)	According to the requirements of § 63.2281(j).

[a] The requirement for the SSM report in row 2 of this table does not apply for new or reconstructed affected sources that commenced construction or reconstruction after September 6, 2019.

■ 22. Table 10 to Subpart DDDD is revised to read as follows:

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD

Citation	Subject	Brief description	Applies to subpart DDDD before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] except as noted in footnote "a" to this table	Applies to subpart DDDD on and after [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] except as noted in footnote "a" to this table
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Prohibited activities; compliance date; circumvention, fragmentation	Yes.	Yes.
§ 63.5	Preconstruction Review and Notification Requirements.	Preconstruction review requirements of section 112(i)(1)	Yes	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes	Yes.
§ 63.6(b)(6)	[Reserved].			
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes	Yes.
§ 63.6(c)(3)–(4)	[Reserved].			
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (*e.g.,* 3 years).	Yes	Yes.
§ 63.6(d)	[Reserved].			
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions..	You must operate and maintain affected source in a manner consistent with safety and good air pollution control practices for minimizing emissions.	Yes	No, see § 63.2250 for general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions ASAP.	You must correct malfunctions as soon as practicable after their occurrence.	Yes	No.
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements.	Operation and maintenance requirements are enforceable independent of emissions limitations or other requirements in relevant standards.	Yes	Yes.
§ 63.6(e)(2)	[Reserved].			
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and SSMP; content of SSMP	Yes	No.
§ 63.6(f)(1)	SSM Exemption	You must comply with emission standards at all times except during SSM.	Yes	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance/Finding of Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes	Yes.
§ 63.6(h)(1)	SSM Exemption	You must comply with opacity and visible emission standards at all times except during SSM.	NA	No.
§ 63.6(h)(2)–(9)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity and visible emission standards	NA	NA.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes	Yes.
§ 63.6(i)(15)	[Reserved].			
§ 63.6(i)(16)	Compliance Extension	Compliance extension and Administrator's authority	Yes	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] except as noted in footnote ''a'' to this table	Applies to subpart DDDD on and after [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] except as noted in footnote ''a'' to this table
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If have to reschedule performance test, must notify Administrator as soon as practicable.	Yes	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes	Yes.
§ 63.7(e)(1)	Performance Testing	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes	No, see § 63.2262(a)–(b).
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs for at least the time specified in the relevant standard; compliance is based on arithmetic mean of three runs; specifies conditions when data from an additional test run can be used.	Yes	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes	Yes.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test	Yes	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance specifications in appendix B of part 60 apply	Yes	Yes.
§ 63.8(a)(3)	[Reserved].			
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	NA	NA.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with and good air pollution control practices.	Yes	Yes.
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS.	Must maintain and operate CMS in accordance with § 63.6(e)(1)	Yes	No.
§ 63.8(c)(1)(ii)	Spare Parts for CMS	Must maintain spare parts for routine CMS repairs	Yes	Yes.
§ 63.8(c)(1)(iii)	Requirements to Develop SSMP for CMS.	Must develop and implement SSMP for CMS	Yes	No.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission of parameter measurements; must verify operational status before or at performance test.	Yes	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes	Yes.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	COMS minimum procedures	NA	NA.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high-level calibration check requirements; out-of-control periods.	Yes	Yes.
§ 63.8(d)(1)–(2)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.	Yes	Yes.
§ 63.8(d)(3)	Written Procedures for CMS	Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions. May incorporate as part of SSMP to avoid duplication..	Yes	No, see § 63.2282(f).
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports	Yes	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring	Yes	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that can't be used in average; rounding of data.	Yes	Yes.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes	Yes.
§ 63.9(b)(1)–(2)	Initial Notifications	Submit notification 120 days after effective date; contents of notification.	Yes	Yes.
§ 63.9(b)(3)	[Reserved].			
§ 63.9(b)(4)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct; notification of commencement of construct/reconstruct; notification of startup; contents of each.	Yes	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed best available control technology/lowest achievable emission rate.	Yes	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes	Yes.
§ 63.9(e)	Notification of Performance Test	Notify EPA Administrator 60 days prior	Yes	Yes.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	Notify EPA Administrator 30 days prior	No	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD—Continued

Citation	Subject	Brief description	Applies to subpart DDDD before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] except as noted in footnote "a" to this table	Applies to subpart DDDD on and after [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] except as noted in footnote "a" to this table
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; keep for 5 years.	Yes	Yes.
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	Records of occurrence and duration of each startup or shutdown that causes source to exceed emission limitation.	Yes	No, see § 63.2282(a).
§ 63.10(b)(2)(ii)	Recordkeeping of Failures to Meet a Standard.	Records of occurrence and duration of each malfunction of operation or air pollution control and monitoring equipment.	Yes	No, see § 63.2282(a) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(b)(2)(iii)	Maintenance Records	Records of maintenance performed on air pollution control and monitoring equipment.	Yes	Yes.
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	Records of actions taken during SSM to minimize emissions	Yes	No.
§ 63.10(b)(2)(vi) and (x)–(xi).	CMS Records	Malfunctions, inoperative, out-of-control	Yes	Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with compliance options and operating requirements; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test	Yes	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes	Yes.
§ 63.10(c)(1)–(6), (9)–(14).	Records	Additional records for CMS	Yes	Yes.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No	No.
§ 63.10(c)(15)	Use of SSMP	Use SSMP to satisfy recordkeeping requirements for identification of malfunction, correction action taken, and nature of repairs to CMS.	Yes	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	NA	NA.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes	Yes.
§ 63.10(d)(5)(i)	Periodic SSM Reports	Contents and submission of periodic SSM reports	Yes	No, see § 63.2281(d)–(e) for malfunction reporting requirements.
§ 63.10(d)(5)(ii)	Immediate SSM Reports	Contents and submission of immediate SSM reports	Yes	No.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit; written copy of performance evaluation; 3 copies of COMS performance evaluation.	Yes	Yes.
§ 63.10(e)(3)	Reports	Excess emission reports	No	No.
§ 63.10(e)(4)	Reporting COMS Data	Must submit COMS data with performance test data	NA	NA.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for EPA Administrator to waive	Yes	Yes.
§ 63.11	Control Device and Work Practice Requirements.	Requirements for flares and alternative work practice for equipment leaks.	NA	NA.
§ 63.12	State Authority and Delegations	State authority to enforce standards	Yes	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent	Yes	Yes.
§ 63.14	Incorporations by Reference	Test methods incorporated by reference	Yes	Yes.
§ 63.15	Availability of Information and Confidentiality.	Public and confidential information	Yes	Yes.
§ 63.16	Performance Track Provisions	Requirements for Performance Track member facilities	Yes	Yes.

[a] New or reconstructed affected sources that commenced construction or reconstruction after September 6, 2019 must comply with the requirements in column 5 of this table beginning on [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] or upon initial startup, whichever is later.

■ 23. Subpart DDDD is amended by adding Appendix B to read as follows:

APPENDIX B TO SUBPART DDDD OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED RELATIVE TO THE PLYWOOD AND COMPOSITE WOOD PRODUCTS "NON-HAP COATING" DEFINITION IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5

APPENDIX B TO SUBPART DDDD OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED RELATIVE TO THE PLYWOOD AND COMPOSITE WOOD PRODUCTS "NON-HAP COATING" DEFINITION IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

[FR Doc. 2019–18827 Filed 9–5–19; 8:45 am]

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