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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 84 Wednesday,
No. 181 September 18, 2019

Pages 49005–49190

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0696; Product Identifier 2019–NM–136–AD; Amendment 39–19730; AD 2019–18–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737 series airplanes, excluding Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires revising the existing maintenance or inspection program to remove text that allows the size of the thrust reverser upper locking actuator lock sensor target to be changed, and, for certain airplanes, performing repetitive integrity tests of the thrust reverser upper locking actuator. This AD was prompted by a report indicating that alteration of thrust reverser upper locking actuators in accordance with certain data in the Boeing aircraft maintenance manual (AMM) could delay or prevent detection of the failure of the locking mechanism of a thrust reverser upper locking actuator. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 3, 2019.

The FAA must receive comments on this AD by November 4, 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.

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–2019–0696; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *Christopher.R.Baker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

In May 2019, Boeing informed the FAA that alteration of thrust reverser upper locking actuators, in accordance with unapproved data in the Boeing AMM, could cause a locking mechanism failure of a thrust reverser upper locking actuator to remain undetected for thousands of flights.

Boeing informed the FAA of the risk that operators could use an existing AMM procedure that was intended for use in rigging a newly installed thrust reverser upper locking actuator to instead alter the functioning of a worn upper locking actuator's lock indication. That procedure removes material from the upper locking actuator's lock sensor target until the upper locking actuator's unlocked indication (the ''REVERSER'' light on the flight deck aft overhead panel, which is illuminated when the upper locking actuator is unlocked or when other system failures are detected) is no longer illuminated. However, that procedure does not require a check to verify that the thrust reverser upper locking actuator locking mechanism is operative or that the unlocked indication functions normally after removal of the material. As a result, it is possible that use of this procedure could prevent actuator unlocked indications to the flight crew if the thrust reverser upper locking actuator locking mechanism has already failed or subsequently fails.

An undetected unlocked thrust reverser upper locking actuator in flight significantly increases the likelihood of an in-flight deployment of the thrust reverser. In-flight thrust reverser deployment in some phases of flight would likely result in loss of airplane control.

FAA's Determination

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

AD Requirements

This AD requires revising the existing maintenance or inspection program to remove certain text from all locations in the existing maintenance and inspection program that instructs the maintainers to remove material from or grind or trim the sensor target of the thrust reverser upper locking actuator. For Model 737–600, –700, –700C, –800, –900, and –900ER series (737 NG) airplanes, this AD also requires repetitive integrity tests of the thrust reverser upper locking actuator.

The Model 737–8 and –9 (737 MAX) airplane fleet is a young fleet and those airplanes have not been subjected to enough wear to warrant the use by any operator of the sensor target trimming procedure that leads to the upper locking actuator lock indication failure that may exist on 737 NG airplanes. The FAA therefore has determined that the integrity test is not necessary for the 737 MAX fleet.

Interim Action

The FAA considers this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the

FAA might consider additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because alteration of thrust reverser upper locking actuators in accordance with certain unapproved AMM data could cause a thrust reverser upper locking actuator that is unlocked in flight to remain undetected, which could significantly increase the likelihood of an in-flight deployment of the thrust reverser and consequent loss of airplane control. The compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule.

Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0696 and Product Identifier 2019–NM–136–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this final rule.

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 AD 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 AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *Christopher.R.Baker@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 2,149 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Integrity test (2,039 airplanes)	8 work-hours × $85 per hour = $680 per test cycle.	$0	$680 per test cycle	$1,386,520 per test cycle.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours x $85 per work-hour).

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Actuator replacement	8 work-hours × $85 per hour = $680	$38,908	$39,588

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–18–03 The Boeing Company: Amendment 39–19730; Docket No. FAA–2019–0696; Product Identifier 2019–NM–136–AD.

(a) Effective Date

This AD is effective October 3, 2019.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

Air Transport Association (ATA) of America Code 78, Exhaust.

(e) Unsafe Condition

This AD was prompted by a report indicating that alteration of thrust reverser upper locking actuators in accordance with certain data contained in the Boeing aircraft maintenance manual (AMM) could delay or prevent detection of the failure of the locking mechanism of a thrust reverser upper locking actuator. The FAA is issuing this AD to address the potential for an undetected unlocked condition of the thrust reverser upper locking actuator locking mechanism in flight, which could significantly increase the likelihood of an in-flight deployment of the thrust reverser and consequent loss of airplane control.

(f) Compliance

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

(g) Maintenance/Inspection Program Revision

For all airplanes: Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, by removing any steps that change the size of the thrust reverser upper locking actuator lock sensor target.

(h) Prohibition From Altering Locking Actuator Target

For all airplanes: As of the effective date of this AD, no person may alter the thrust reverser upper locking actuator lock sensor target by grinding or trimming or otherwise removing material from the lock sensor target.

(i) Actuator Integrity Test

For Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: Within 90 days after the effective date of this AD, conduct an integrity test of the thrust reverser upper locking actuator on all 4 locking actuators on the airplane. The integrity test must include at least the steps specified in figure 1 to paragraphs (i) and (k) of this AD. The integrity test is not required to be completed for all 4 actuators in one maintenance visit, provided all 4 actuators are tested within the compliance times specified in this paragraph. During the test, a slight movement from fully stowed on the lower portion of the thrust reverser is acceptable due to the wind up in the flexible shafts between the synchronization lock and the upper actuator lock.

Figure 1 to paragraphs (i) and (k) – *Thrust reverser upper locking actuator integrity test*

Critical steps contained in the locking actuator integrity test:

- **Secure the thrust reverser for ground maintenance ensuring the control valve module manual isolation valve handle is pinned in bypass mode**
- **Do a check of the thrust reverser upper locking actuator**
  - From the fully stowed position, attempt to manually extend the thrust reverser through the synchronization lock manual drive in the deploy direction
  - Gradually apply torque up to 50 in-lbs or until you hear the override clutch on the synchronization lock manual drive making the "ratcheting" sound
    - Verify that the thrust reverser does not deploy

Note 1 to paragraph (i): Additional guidance for the integrity test can be found in Boeing 737 AMM Task 78–31–03.

(j) Repetitive Test Interval

After the initial integrity test required by paragraph (i) of this AD, repeat the test thereafter at intervals not to exceed 750 flight hours.

(k) Corrective Action for Failed Integrity Test

If, during any integrity test required by paragraph (i) or (j) of this AD, the movement of the thrust reverser exceeds the acceptable ''slight movement'' described in paragraph (i) of this AD, replace the locking actuator before further flight.

(l) Parts Installation Prohibition

For airplanes identified in paragraph (c) of this AD, excluding Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: As of the effective date of this AD, no person may install a thrust reverser upper locking actuator part number 315A2801–1, –2, –3, –4, or –5.

(m) 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 (n) 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.

(n) Related Information

For more information about this AD, contact Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *Christopher.R.Baker@faa.gov.*

(o) Material Incorporated by Reference

None.

Issued in Des Moines, Washington, on September 11, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–20184 Filed 9–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0502; Airspace Docket No. 19–ASO–13]

RIN 2120–AA66

Amendment of the Class E Airspace; Haleyville, AL, and Hamilton, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Posey Field Airport, Haleyville, AL, and Marion County-Rankin Fite Airport, Hamilton, AL. This action is due to an airspace review caused by the decommissioning of the Hamilton VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at these airports, as part of the VOR Minimum Operational Network (MON) Program. The name and geographic coordinates of Marion County-Rankin Fite Airport are also being updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

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 7400.11D, 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 7400.11D 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Posey Field Airport, Haleyville, AL, and Marion County-Rankin Fite Airport, Hamilton, AL, to support IFR operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 33022; July 11, 2019) for Docket No. FAA–2019–0502 to amend the Class E airspace extending upward from 700 feet above the surface at Posey Field Airport, Haleyville, AL, and Marion County-Rankin Fite Airport, Hamilton, AL. 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 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (increased from a 6.4-mile radius) at Posey Field Airport, Haleyville, AL; removes the city associated with the airport in the airspace legal description to comply with a change in FAA Order 7400.2M, Procedures for Handling Airspace Matters; removes the Hamilton VORTAC and associated extension from the airspace legal description; and adds an extension 2 miles each side of the 002° bearing from the airport extending from the 6.5-mile radius to 11 miles north of the airport;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (reduced from a 6.6-mile radius) of Marion County-Rankin Fite Airport, Hamilton, AL; removes the city associated with the airport in the airspace legal description to comply with a change in FAA Order 7400.2M; removes the Hamilton VORTAC and associated extension from the airspace legal description; adds an extension 4 miles each side of the 002° bearing from the airport extending from the 6.5-mile radius to 11.8 miles north of the airport; adds an extension 4 miles each side of the 182° bearing from the airport extending from the 6.5-mile radius to 11.4 miles south of the airport; and updates the name and geographic coordinates of the Marion County-Rankin Fite Airport (formerly Marion County Airport) to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Hamilton VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D,

Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ASO AL E5 Haleyville, AL [Amended]

Posey Field Airport, AL
(Lat. 34°16′49″ N, long. 87°36′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Posey Field Airport, and within 2 miles each side of the 002° bearing from the airport extending from the 6.5-mile radius to 11 miles north of the airport.

ASO AL E5 Hamilton, AL [Amended]

Marion County-Rankin Fite Airport, AL
(Lat. 34°07′01″ N, long. 87°59′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marion County-Rankin Fite Airport, and within 4 miles each side of the 002° bearing from the airport extending from the 6.5-mile radius to 11.8 miles north of the airport, and within 4 miles each side of the 182° bearing from the airport extending from the 6.5-mile radius to 11.4 miles south of the airport.

Issued in Fort Worth, Texas, on September 11, 2019.

Johanna Forkner,

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

[FR Doc. 2019–20110 Filed 9–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0529; Airspace Docket No. 19–AGL–20]

RIN 2120–AA66

Amendment of Class E Airspace; Mattoon/Charleston, IL; and Revocation of Class E Airspace; Monticello, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Coles County Memorial Airport, Mattoon/Charleston, IL, and removes the Class E airspace extending upward from 700 feet above the surface at Piatt County Airport, Monticello, IL. This action is due to an airspace review caused by the decommissioning of the Mattoon VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at these airports, as part of the VOR Minimum Operational Network (MON) Program; and the closure of the Piatt County Airport. The geographic coordinates of and the city associated with the Coles County Memorial Airport are also being updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at Coles County Memorial Airport.

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 7400.11D, 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 7400.11D 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Coles County Memorial Airport, Mattoon/Charleston, IL, and removes the Class E airspace extending upward from 700 feet above the surface at Piatt County Airport, Monticello, IL, to support IFR operations at the Coles County Memorial Airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 33191; July 12, 2019) for Docket No. FAA–2019–0529 to amend the Class E airspace extending upward from 700 feet above the surface at Coles County Memorial Airport, Mattoon/Charleston, IL, and remove the Class E airspace extending upward from 700 feet above the surface at Piatt County Airport, Monticello, IL. 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 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile radius (decreased from a 7-mile radius) of the Coles County Memorial Airport, Mattoon, IL; updates the name of the city to Mattoon/Charleston, IL (previously Mattoon, IL) to coincide with the FAA's aeronautical database; removes the city associated with the airport in the airspace legal description to comply with FAA Order 7400.2M, Procedures for Handling Airspace Matters; and updates the geographic

coordinates of the airport to coincide with the FAA's aeronautic database;

And removes the Class E airspace extending upward from 700 feet above the surface at Piatt County Airport, Monticello, IL, due to the instrument procedures being cancelled and the airport being closed, so the airspace is no longer required.

Subsequent to publication, the FAA discovered a typographic error in the header of the airspace legal description removing the Monticello, IL, airspace. The header is corrected from ''AGL MN E5 Monticello, IL [Removed]'' to ''AGL IL E5 Monticello, IL [Removed].'' All else remains the same.

This action is the result of an airspace review caused by the decommissioning of the Mattoon VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

AGL IL E5 Mattoon/Charleston, IL [Amended]

Coles County Memorial Airport, IL
(Lat. 39°28′40″ N, long. 88°16′48″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Coles County Memorial Airport.

* * * * *

AGL IL E5 Monticello, IL [Removed]

Issued in Fort Worth, Texas, on September 11, 2019.

Johanna Forkner,

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

[FR Doc. 2019–20105 Filed 9–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0471; Airspace Docket No. 19–AGL–18]

RIN 2120–AA66

Amendment of Class E Airspace; Fairmont, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface at Fairmont Municipal Airport, Fairmont, MN. This action is due to an airspace review caused by the decommissioning of the Fairmont VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the Fairmont Municipal Airport are also being updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: 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 7400.11D, 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 7400.11D 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface at Fairmont Municipal Airport, Fairmont, MN, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 33194; July 12, 2019) for Docket No. FAA–2019–0471 to amend the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface at Fairmont Municipal Airport, Fairmont, MN. 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 6002 and 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Amends the Class E surface airspace to within a 4.1-mile radius (increased from a 4-mile radius) of the Fairmont Municipal Airport, Fairmont, MN; removes the extensions to the airspace, as they are no longer needed; updates the geographic coordinates of the airport to coincide with the FAA's aeronautic database; and updates the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile radius (increased from a 6.5-mile radius) of the Fairmont Municipal Airport; removes the extensions, as they are no longer required; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Fairmont VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas

* * * * *

AGL MN E2 Fairmont, MN [Amended]

Fairmont Municipal Airport, MN
(Lat. 43°38′38″ N, long. 94°24′56″ W)

Within a 4.1-mile radius of the Fairmont Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL MN E5 Fairmont, MN [Amended]

Fairmont Municipal Airport, MN
(Lat. 43°38′38″ N, long. 94°24′56″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Fairmont Municipal Airport.

Issued in Fort Worth, Texas, on September 11, 2019.

Johanna Forkner,

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

[FR Doc. 2019–20109 Filed 9–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0530; Airspace Docket No. 19–ASO–14]

RIN 2120–AA66

Amendment of the Class E Airspace and Establishment of Class E Airspace; Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface and establishes a Class E airspace area designated as an extension to a Class C surface area at Huntsville International-Carl T. Jones Field, Huntsville, AL. This action is due to an airspace review caused by the decommissioning of the Decatur VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument

procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The names of Huntsville International-Carl T. Jones Field, Redstone AAF, Pryor Field Regional Airport, and Huntsville Executive Tom Sharp Jr. Field and the geographic coordinates of Huntsville International-Carl T. Jones Field, Pryor Field Regional Airport, and Huntsville Executive Tom Sharp Jr. Field are also being updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: 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 7400.11D, 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 7400.11D 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface and establishes a Class E airspace area designated as an extension to a Class C surface area at Huntsville International-Carl T. Jones Field, Huntsville, AL, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 33196; July 12, 2019) for Docket No. FAA–2019–0530 to amend the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface and establish a Class E airspace area designated as an extension to a Class C surface area at Huntsville International-Carl T. Jones Field, Huntsville, AL. 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 6002, 6003, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Amends the Class E surface airspace at Huntsville International-Carl T. Jones Field, Huntsville, AL, by updating the city in the airspace legal description to Huntsville, AL (previously Huntsville International-Carl T. Jones Field, AL), to comply with a change to FAA Order 7400.2M, Procedures for Handling Airspace Matters; updates the geographic coordinates of the Huntsville International-Carl T. Jones Field; updates the names of Huntsville International-Carl T. Jones Field (previously Huntsville International-Carl T. Jones Field Airport) and Redstone AAF (previously Redstone Army Air Field) to coincide with the FAA's aeronautical database; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

Establishes a Class E airspace area designated as an extension to a Class C surface area at Huntsville International-Carl T. Jones Field extending 1 mile each side of the 181° bearing from the Huntsville International-Carl T. Jones Field: RWY 36L–LOC extending from the 5-mile radius of Huntsville International-Carl T. Jones Field to 6.3 miles south of the Huntsville International-Carl T. Jones Field: RWY 36L–LOC;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 7.5-mile radius (reduced from an 8.2-mile radius) of Huntsville International-Carl T. Jones Field; adds an extension 3 miles each side of the 001° bearing from Huntsville International-Carl T. Jones Field extending from the 7.5-mile radius to 12.3 miles north of the Huntsville International-Carl T. Jones Field; adds an extension 1.3 miles each side of the 181° bearing from the Huntsville International-Carl T. Jones Field: RWY 36L–LOC extending from the 7.5-mile radius to 8.3 miles south of the Huntsville International-Carl T. Jones Field: RWY 36L–LOC; updates the names of Huntsville International-Carl T. Jones Field (previously Huntsville International-Carl T. Jones Airport), Pryor Field Regional Airport (previously Pryor Field), Decatur, AL, and Huntsville Executive Tom Sharp Jr. Field (previously Huntsville Airport North), Huntsville, AL, to coincide with the FAA's aeronautical database; and updates the geographic coordinates of Huntsville International-Carl T. Jones Field, Pryor Field Regional Airport, and Huntsville Executive Tom Sharp Jr. Field to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Decatur VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative

comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area

* * * * *

ASO AL E2 Huntsville, AL [Amended]

Huntsville International-Carl T. Jones Field, AL
(Lat. 34°38′14″ N, long. 86°46′30″ W)
Redstone AAF
(Lat. 34°40′43″ N, long. 86°41′05″ W)

Within a 5-mile radius of the Huntsville International-Carl T. Jones Field, excluding that airspace within a 1-mile radius of the Redstone AAF. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6003 Class E Airspace Areas Designated as an Extension to a Class C Surface Area

* * * * *

ASO AL E3 Huntsville, AL [Established]

Huntsville International-Carl T. Jones Field, AL
(Lat. 34°38′14″ N, long. 86°46′30″ W)
Huntsville International-Carl T. Jones Field: RWY 36L–LOC
(Lat. 34°39′20″ N, long. 86°46′55″ W)

That airspace extending upward from the surface within 1 mile each side of the 181° bearing from the Huntsville International-Carl T. Jones Field: RWY 36L–LOC extending from the 5-mile radius of the Huntsville International-Carl T. Jones Field to 6.3 miles south of the Huntsville International-Carl T. Jones Field: RWY 36L–LOC.

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

* * * * *

ASO AL E5 Huntsville, AL [Amended]

Huntsville International-Carl T. Jones Field, AL
(Lat. 34°38′14″ N, long. 86°46′30″ W)
Huntsville International-Carl T. Jones Field: RWY 36L–LOC
(Lat. 34°39′20″ N, long. 86°46′55″ W)
Redstone AAF
(Lat. 34°40′43″ N, long. 86°41′05″ W)
Pryor Field Regional Airport, AL
(Lat. 34°39′15″ N, long. 86°56′43″ W)
Huntsville Executive Tom Sharp Jr. Field, AL
(Lat. 34°51′34″ N, long. 86°33′27″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Huntsville International-Carl T. Jones Field, and within 3 miles each side of the 001° bearing from Huntsville International-Carl T. Jones Field extending from the 7.5-mile radius to 12.3 miles north of Huntsville International-Carl T. Jones Field, and within 1.3 miles each side of the 181° bearing from the Huntsville International-Carl T. Jones Field: RWY 36L–LOC extending from the 7.5 mile radius of Huntsville International-Carl T. Jones Field to 8.3 miles south of the Huntsville International-Carl T. Jones Field: RWY 36L–LOC, and within a 9.5-mile radius of Redstone AAF, and within a 7-mile radius of Pryor Field Regional Airport, and within a 6.3-mile radius of Huntsville Executive Tom Sharp Jr. Field.

Issued in Fort Worth, Texas, on September 11, 2019.

Johanna Forkner,

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

[FR Doc. 2019–20111 Filed 9–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0634]

RIN 1625–AA08

Special Local Regulation; North Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the North Atlantic Ocean. This action is necessary to provide for the safety of life on these navigable waters located at Ocean City, MD, during a high-speed power boat racing event on September 29, 2019. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander.

DATES: This rule is effective from 8:30 a.m. to 5:30 p.m. on September 29, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0634 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 Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

OPA Racing LLC of Brick Township, NJ, notified the Coast Guard that it will be conducting the Ocean City Grand Prix between 9:00 a.m. and 5:00 p.m. on September 29, 2019, along a designated, marked racetrack-type course located in the North Atlantic Ocean, at Ocean City, MD. In response, on August 23, 2019, the Coast Guard published a notice of

proposed rulemaking (NPRM) titled ''Special Local Regulation; North Atlantic Ocean, Ocean City, MD'' (84 FR 44263). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this power boat racing event. During the comment period that ended September 9, 2019, we received one comment.

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 impracticable and contrary to public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this marine event. Immediate action is needed protect participants, spectators, and other persons and vessels during the high-speed race event on these navigable waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the power boat racing event will be a safety concern for anyone intending to operate in or near the event area. The purpose of this rule is to protect event participants, spectators, and transiting vessels on specified waters of the North Atlantic Ocean before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published August 23, 2019. We thank the commenter for taking time to review the NPRM and submitting a comment regarding this action.

The commenter stated that the high-speed power boat racing event should be cancelled in order to not obstruct normal waterway operations and waste precious energy.

With few exceptions, normal waterway operations in the event area are recreational in nature that will be able to take place safely outside the regulated area. Waterway users that may be affected by the regulated area are well informed of this annually occurring offshore power boat racing event. Methods include Code of Federal Regulations, internet websites (*http://www.oparacing.org/oc.html, https://oceancitymd.gov/oc/event/ocean-city-powerboat-grand-prix/*), regional boating publications (*i.e.,* PropTalk), social media (*i.e.,* Facebook), and local media outlets (*i.e.,* The Dispatch), which include newspaper, radio and television. The part of the comment regarding energy is outside the scope of the rulemaking; the regulated area is established to provide for waterway safety.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation to be enforced from 8:30 a.m. to 5:30 p.m. on September 29, 2019. The regulated area will cover all navigable waters of the North Atlantic Ocean, within an area bounded by the following coordinates: Commencing at a point near the shoreline at latitude 38°21′42″ N, longitude 075°04′11″ W, thence east to latitude 38°21′33″ N, longitude 075°03′10″ W, thence southwest to latitude 38°19′25″ N, longitude 075°04′02″ W, thence west to the shoreline at latitude 38°19′35″ N, longitude 075°05′02″ W, at Ocean City, MD. The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the power boat racing event, scheduled from 9:00 a.m. until 5:00 p.m. on September 29, 2019.

Except for participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or PATCOM before entering the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF–FM channel 16. Vessel traffic will be able to safely transit the regulated area once the PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct spectator vessels while within the regulated area. Only participant vessels and official patrol vessels will be allowed to enter the race area.

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 regulated area. Vessel traffic will be able to safely transit around this regulated area, which would impact a small designated area of the North Atlantic Ocean for 9 hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the PATCOM deems it safe to do so.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States. The temporary regulated area will be in effect for nine hours. It is categorically excluded from further review under paragraph L61 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Memorandum for the Record 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.501T05–0634 to read as follows:

§ 100.501T05–0634 Special Local Regulation; North Atlantic Ocean, Ocean City, MD.

(a) *Locations.* All coordinates reference Datum NAD 1983.

(1) *Regulated area.* All navigable waters of the North Atlantic Ocean, within an area bounded by the following coordinates: Commencing at a point near the shoreline at position latitude 38°21′42″ N, longitude 075°04′11″ W; thence east to latitude 38°21′33″ N, longitude 075°03′10″ W; thence southwest to latitude 38°19′25″ N, longitude 075°04′02″ W; thence west to the shoreline at latitude 38°19′35″ N, longitude 075°05′02″ W, at Ocean City, MD. The race area, buffer area, and spectator area are within the regulated area.

(2) *Race area.* The race area is a polygon in shape measuring approximately 3,500 yards in length by 350 yards in width. The area is bounded by a line commencing at position latitude 38°19′46.85″ N, longitude 075°04′43.28″ W, thence east to latitude 38°19′44.23″ N, longitude 075°04′29.89″ W, thence north and parallel to Ocean City, MD shoreline to latitude 38°21′23.24″ N, longitude 075°03′48.87″ W, thence west to latitude 38°21′25.12″ N, longitude 075°04′02.45″ W; thence south to the point of origin.

(3) *Buffer zone.* The buffer zone is a polygon in shape measuring approximately 500 yards in all directions surrounding the entire race area described in paragraph (a) of this section. The area is bounded by a line commencing at a point near the shoreline at position latitude 38°21′42″ N, longitude 075°04′11″ W; thence east to latitude 38°21′35″ N, longitude 075°03′24″ W; thence southwest to latitude 38°19′28″ N, longitude 075°04′17″ W; thence west to the shoreline at latitude 38°19′35″ N, longitude 075°05′02″ W, at Ocean City, MD.

(4) *Spectator area.* The designated spectator area is a polygon in shape measuring approximately 3,500 yards in length by 350 yards in width. The area is bounded by a line commencing at position latitude 38°19′40″ N, longitude 075°04′12″ W, thence east to latitude 38°19′37″ N, longitude 075°03′59″ W, thence northeast to latitude 38°21′17″ N, longitude 075°03′17″ W, thence west to latitude 38°21′20″ N, longitude 075°03′31″ W, thence southwest to point of origin.

(b) *Definitions.* As used in this section:

Buffer zone is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer

zone is to minimize potential collision conflicts with marine event participants or race boats and spectator vessels or nearby transiting vessels. This area provides separation between a Race Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the Ocean City Grand Prix or otherwise designated by the event sponsor as having a function tied to the event.

Race area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake.

(4) Only participant vessels and official patrol vessels are allowed to enter the race area.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8:30 a.m. to 5:30 p.m. on September 29, 2019.

Dated: September 12, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019–20107 Filed 9–17–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0782]

RIN 1625–AA00

Safety Zone; Delaware Bay and River, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Delaware Bay and River to restrict and protect vessel traffic during the transit of Post-Panamax gantry cranes from the Atlantic Ocean to the Port of Philadelphia. This action is intended to protect mariners and vessels from the hazards associated with the transportation of these large cranes. Entry of vessels or persons into this zone will be prohibited unless a vessel meets the stated requirements or is specifically authorized by the Captain of the Port Delaware Bay. This rule compliments a safety zone found in docket number USCG–2019–0784 addressing safety risks while the vessel carrying the cranes is moored at the Port of Philadelphia.

DATES: This rule is effective without actual notice from September 18, 2019 through October 15, 2019. For the purposes of enforcement, actual notice will be used from September 14, 2019 through September 18, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0782 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 about this proposed rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard Sector Delaware Bay, Waterways Management Branch; telephone (215) 271–4889, email *Edmund.J.Ofalt@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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 M/V ZHEN HUA 26 is transporting post-Panamax gantry cranes to ports within the United States. These large cranes extend beyond the width of M/V ZHEN HUA 26 on both sides of the vessel and create a navigational hazard to vessels operating within a certain proximity. The cranes are fastened in a manner that facilitates passage through the open ocean. Upon arrival to the Delaware River, M/V ZHEN HUA 26 will transit to anchorage and begin an approximately four day process of removing the sea fastenings. The M/V ZHEN HUA 26 will then proceed, conditions permitting, to berth

at the Port of Philadelphia Greenwich Terminal to deliver the cranes. To ensure a safe transit during its inbound transit from its initial anchorage to the Greenwich Terminal, the vessel may stop to anchor along the way in a designated anchorage area, as set forth in 33 CFR 110.157, for a short time if needed due to weather and tidal requirements.

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 it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the anticipated arrival of M/V ZHEN HUA 26 to the Delaware Bay Captain of the Port zone. The rule must be in force by September 14, 2019, to ensure the safety of waterway users and the general public from hazards associated with the transport of post-Panamax gantry cranes within the Delaware Bay Captain of the Port Zone.

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 impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with transportation of post-Panamax gantry cranes from anchorage in Delaware Bay to its berth at Greenwich Terminal in Philadelphia, PA.

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 COTP has determined that there are potential hazards associated with the transportation of post-Panamax gantry cranes. The COTP Delaware Bay has determined that the potential hazards will be a safety concern for anyone within a 200-yard radius of the vessel except when the vessel is moored at Greenwich Terminal in Philadelphia, Pennsylvania. This rule is needed to protect personnel and vessels in the navigable waters within the safety zone while the cranes are being transported.

IV. Discussion of the Rule

The safety zone includes all navigable waters within 200 yards of M/V ZHEN HUA 26 when the vessel first anchors within the Delaware Bay Captain of the Port Zone until it completes its inbound transit to and mooring operations at Greenwich Terminal in Philadelphia. Because the vessel will not be carrying cranes on its outbound transit, this rule will not apply to its outbound transit. The anticipated date of arrival for the M/V ZHEN HUA 26 is September 14, 2019. However, inclement weather and other unforeseen circumstances may necessitate a change in the date of transit upriver. Sector Delaware Bay will notify the maritime community of the date of transit, at a minimum, via marine safety information bulletin and broadcast notice to mariners.

To ensure a safe transit during the inbound transit from the initial anchorage to Greenwich Terminal, the vessel may stop to anchor along the way in a designated anchorage area, as set forth in 33 CFR 110.157, for a short time if needed due to weather and tidal requirements. The safety zone will remain in place during the time(s) the vessel is anchored. Vessels will be allowed to transit through the safety zone without seeking advance permission from the COTP Delaware Bay while the M/V ZHEN HUA 26 is anchored in a designated anchorage area if they meet the following requirements: transit through the safety zone at the minimum safe speed to reduce wake and maintain steerage, and, except for towing vessels designated as assist tugs and operating in such capacity, do not overtake, meet, or otherwise pass any other unmoored or unanchored vessel while transiting through the safety zone. Vessels which do not meet all of the requirements listed above are prohibited from entering or transiting the safety zone without prior approval of the COTP Delaware Bay. Additionally, vessels must ask permission to enter or transit the safety zone any time the M/V ZHEN HUA 26 is underway. Vessels requesting to enter or transit the safety zone may contact the Sector Delaware Bay Command Center via VHF–FM channel 16. The Coast Guard anticipates that most vessels will be able to freely transit around the safety zone and will not need to seek permission to enter the zone while the M/V ZHEN HUA 26 is underway.

There will be a pre-designated safety vessel escorting the ZHEN HUA 26 while it is underway to monitor the flow of traffic and inform mariners that the gantry crane transit is in progress.

The Coast Guard is establishing a second safety zone through a separate rulemaking found in Docket number USCG–2019–0784 to ensure the safety of vessels and persons transiting the area during offloading operations once the vessel is moored at the terminal.

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 short duration and traffic management of the safety zone. The safety zone will allow for vessels to transit through the safety zone with permission while the M/V ZHEN HUA 26 is underway or in a designated anchorage without permission if certain requirements are met. The Coast Guard anticipates that most vessels will be able to freely transit around the safety zone and will not need to seek permission to enter the zone while the M/V ZHEN HUA 26 is underway. For these reasons, the impact on waterway traffic is expected to be minimal.

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 a moving safety zone lasting only the duration of transit of a vessel carrying post-Panamax gantry cranes. It is categorically excluded from further review under paragraph L60(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 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 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.T05–0782, to read as follows:

§ 165.T05–0782 Safety Zone, Delaware River, Philadelphia, PA.

(a) *Location.* The following area is a safety zone: All navigable waters within 200 yards of the M/V ZHEN HUA 26 while the vessel is underway or anchored within the Delaware Bay Captain of the Port Zone.

(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 Delaware Bay (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general safety zones regulations in subpart C of this part and except for as described in paragraph (c)(3) of this section, vessels may not enter, remain in, or transit 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 or remain in the zone, unless moored or anchored outside the main navigational channel, contact the COTP or the COTP's representative via VHF–FM Channel 16. 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.

(3) A vessel may transit the safety zone described in paragraph (a) without permission from the COTP if all of the following criteria are met:

(i) The M/V ZHEN HUA 26 is anchored in a designated anchorage as defined in 33 CFR 110.157.

(ii) The transiting vessel maintains the minimum safe speed to reduce wake and maintain steerage.

(iii) Unless it is a towing vessel designated as an assist tug and operating in such capacity, the transiting vessel may not meet, overtake, or otherwise pass another unmoored or unanchored vessel within the safety zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* (1) Enforcement of the safety zone will begin when the M/V ZHEN HUA 26 commences initial anchoring operations within the Delaware Bay Captain of the Port zone until midnight on October 15, 2019 or until mooring operations are completed at Greenwich terminals in Philadelphia, PA.

(2) The anticipated date of arrival for the M/V ZHEN HUA 26 to the Delaware Bay Captain of the Port zone is September 14, 2019.

Dated: September 11, 2019.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2019–20101 Filed 9–17–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–1060]

RIN 1625–AA00

Safety Zone; Unionport (Bruckner Expressway) Bridge, Westchester Creek, Bronx, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I–95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery at mile 1.7 over Westchester Creek. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by installation of two temporary vertical lift bridges during the replacement of the existing Unionport (Bruckner Expressway) Bridge at mile 1.7 over Westchester Creek. When enforced, this regulation prohibits entry of vessels or persons into the safety zone unless authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective without actual notice from September 18, 2019 through May 31, 2019. For the purposes of enforcement, actual notice will be used from February 25, 2019 through September 18, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–1060 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 Mr. Craig Lapiejko, Waterways Management, First Coast Guard District; telephone (617) 223–8351, email *Craig.D.Lapiejko@uscg.mil.* You may also call or email Mr. Jeff Yunker, Waterways Management Division, U.S. Coast Guard Sector New York, telephone (718) 354–4195, email *Jeffrey.M.Yunker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
LNM Local Notice to Mariners
NPRM Notice of proposed rulemaking
NYSDOT New York State Department of Transportation
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Shoreside construction for Unionport Bridge replacement project started on July 17, 2017, and is tentatively scheduled for completion on, or about, July 13, 2021. During this project, removal and replacement of the original structure will take place. To accomplish these tasks, a temporary vertical lift bridge will be installed upstream, and downstream, of the original structure to facilitate construction and maintain shoreside vehicle traffic.

On November 27, 2018, Lane Construction, the contractor selected for the Unionport Bridge construction project, submitted their regulation request to the Waterways Management Division of U. S. Coast Guard Sector New York. Lane Construction requested a temporary safety zone be established, possibly lasting up to 96 hours, within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I–95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery, at mile 1.7 over Westchester Creek during the float-in, erection, and installation of two temporary vertical lift spans by barge. We anticipate enforcing the safety zone during the heavy lift operations, occurring between approximately February 25, 2019 and February 28, 2019. The safety zone is expected to be enforced for approximately one 96-hour period when vessels are preparing for and conducting the temporary bridge installation operations. The duration of enforcement for the safety zone is intended to protect personnel, vessels, and the marine environment in these waters while the temporary bridge is being installed. During the enforcement period, all vessels and persons must obtain permission from the Captain of the Port New York or a designated representative before entering the safety zone.

The temporary bridge installation operations could take place anytime between February 25, 2019 and May 1, 2019. However, we anticipated the installation operations to begin on February 25, 2019 sta. The Coast Guard is publishing this rule to be effective through May 01, 2019 in case the project is delayed due to unforeseen circumstances.

The Coast Guard will issue a LNM and/or a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) with as much advance notice as possible for any period of waterway closure or as soon as practicable in response to unforeseen circumstances. Upon completion of temporary bridge installation bridges, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners and LNM.

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 good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The late finalization of project details did not give the Coast Guard enough time to issue a modified bridge permit, publish an NPRM, take public comments, and issue a final rule before the installation of the two temporary vertical lift bridges is set to begin. It would be impracticable and contrary to the public interest to delay promulgating this rule as it is necessary to establish this safety zone before the temporary vertical lift bridge installations begin on, or about, February 25, 2019, to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge replacement project. A

delay of the replacement project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, delay the date when the replacement project is expected to be completed, and open the new bridge for normal operations.

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 reasons stated in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to the public interest because timely action is needed to respond to the potential safety hazards associated with the construction project.

II. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with floating in of two, temporary vertical lift bridges starting on or about February 25, 2019. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters of Westchester Creek within the safety zone while the bridge replacement project is ongoing.

IV. Discussion of the Rule

This rule establishes a safety zone from February 25, 2019 through May 31, 2019. The safety zone will cover all navigable waters from surface to bottom within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I–95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery at mile 1.7 over Westchester Creek. Chartlets of the area are available in the docket. When enforced, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the LNM or Broadcast Notice to Mariners via marine Channel 16 (VHF–FM) in advance of any enforcement.

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 following reasons: (1) The safety zone only impacts a small designated area of Westchester Creek, (2) the safety zone will only be enforced for approximately 96 hours during the float-in, erection, and installation of two temporary vertical lift spans by barge or if there is an emergency or other unforeseen circumstance, (3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP or a designated representative. The Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via LNM or Broadcast Notice to Mariners via marine channel 16 (VHF–FM).

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 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 Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have 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 up to 96 hours that will prohibit entry within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I–95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery at mile 1.7 over Westchester Creek. Channel openings may be requested by mariners before, or after, each work day when requested 24-hours in advance by mariners. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 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: 33 U.S.C. 1231; 50 U.S.C. 191; 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.T01–1060 to read as follows:

§ 165.T01–1060 Safety Zone, Unionport (Bruckner Expressway) Bridge, Westchester Creek, Bronx, NY.

(a) *Location.* The following area is a safety zone: all waters of Westchester Creek at mile 1.7, from surface to bottom, within a 500-foot radius of the New York State Department of Transportation (NYSDOT) I–95 bridge structures to the north, and south, of the Unionport (Bruckner Expressway) Bridge, construction vessels, and machinery.

(b) *Definitions.* As used in this section:

Designated representative means any Coast Guard commissioned, warrant, petty officer, or designated Patrol Commander of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Northern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessels means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP to enforce this section.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.20 and 165.23 apply.

(2) During periods of enforcement, no person or vessel may enter or remain in the safety zone described in paragraph (a) of this section unless authorized by the the Captain of the Port (COTP) or the COTP's designated representative. However, any vessel that is granted permission by the COTP or the COTP's designated representative must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(3) During periods of enforcement, any vessels transiting must comply with all orders and directions from the COTP or the COTP's designated representative.

(4) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed by the Coast Guard.

(5) The COTP will promulgate a notice of the channel closure or restrictions by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, LNM and/or Broadcast Notice to Mariners.

(d) *Enforcement periods.* (1) This rule will be effective on February 25, 2019, through May 1, 2019, but will only be enforced during the float-in, erection, and installation of two temporary vertical lift spans by barge.

(2) *Notice of suspension of enforcement.* If enforcement is suspended, the COTP will promulgate a notice of the suspension of enforcement by appropriate means. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and/or LNM. Such notification will include the approximate date and time enforcement will be suspended as well as the approximate date and time enforcement will resume.

(3) Violations of this regulation may be reported to the COTP at (718) 354–4353 or on VHF-Channel 16.

Dated: July 26, 2019.

J.P. Tama,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2019–19990 Filed 9–17–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0784]

RIN 1625–AA00

Safety Zone, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Delaware River to restrict and protect vessel traffic during the offloading of two Post-Panamax gantry cranes at the Port of Philadelphia. This action is intended to protect mariners and vessels from the hazards associated with these offloading activities. Entry of vessels or persons into this zone is prohibited unless a vessel meets the stated requirements or is specifically authorized by the Captain of the Port Delaware Bay. This rule compliments a safety zone found in docket number USCG–2019–0782 addressing navigation risks while the vessel carrying the cranes is anchored or underway in Delaware Bay and River.

DATES: This rule is effective without actual notice from September 18, 2019 through October 15, 2019. For the purposes of enforcement, actual notice will be used from September 14, 2019 through September 18, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0782 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 about this proposed rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard Sector Delaware Bay, Waterways Management Branch; telephone (215) 271–4889, email *Edmund.J.Ofalt@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 M/V ZHEN HUA 26 is transporting post-Panamax gantry cranes to ports within the United States. These large cranes extend beyond the width of M/V ZHEN HUA 26 on both sides of the vessel and create a navigational hazard to vessels operating within a certain proximity. The cranes are fastened in a manner which facilitates passage through the open ocean. Upon arrival to the Delaware River, M/V ZHEN HUA 26 will transit to anchorage and begin an approximately four day process of removing the sea fastenings. The M/V ZHEN HUA 26 will then proceed, conditions permitting, to berth at the Port of Philadelphia Greenwich Terminal where it will offload the cranes. Because offloading the cranes requires precise environmental conditions which passing traffic could disrupt, and with the consequences of failure being catastrophic to those in proximity to the operation, the facility, and the waterway, we are establishing a safety zone around the vessel while it is preparing for and conducting the operation to offload the cranes.

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 it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the anticipated arrival of M/V ZHEN HUA 26 to the Delaware Bay Captain of the Port zone. The rule must be in force by September 14, 2019, to serve its purpose of ensuring the safety of waterway users and the general public from hazards associated with the offloading of post-Panamax gantry cranes with the Delaware Bay Captain of the Port Zone.

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 impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with the offloading of the post-Panamax gantry cranes.

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 COTP has determined that there are potential hazards associated with the offloading of the post-Panamax gantry cranes. These potential hazards will be a safety concern for anyone transiting navigable waters of the Delaware River bounded to the south by a line drawn from the southeast corner of Pier 124S at 39°53′41″ N, 075°08′19″ W, thence east-southeast to the New Jersey Shoreline at 39°53′34″ N, 075°07′49″ W, and bounded to the north by the southernmost edge of the Walt Whitman Bridge.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on all waters of the Delaware River bounded to the south by a line drawn from the southeast corner of Pier 124S at 39°53′41″ N, 075°08′19″ W, thence east-southeast to the New Jersey Shoreline at 39°53′34″ N, 075°07′49″ W, and bounded to the north by the southernmost edge of the Walt Whitman Bridge. This safety zone is needed to protect personnel and vessels, in the navigable waters within the safety zone as well as persons on the adjacent shoreline during offloading of two Post-Panamax gantry cranes. This safety zone will be enforced for approximately seven days beginning from the time the M/V ZHEN HUA 26 arrives at berth at Greenwich Terminal until the vessel departs from the terminal, unless cancelled earlier by the COTP Delaware Bay. Enforcement of the safety zone will be announced via broadcast notice to mariners.

Vessels will be able to transit through the safety zone without permission from the COTP Delaware Bay if they meet the following requirements: (1) Transit through the safety zone at the minimum safe speed to reduce wake and maintain steerage, (2) except for towing vessels designated as assist tugs and operating in such capacity, do not overtake, meet, or otherwise pass any other unmoored or unanchored vessel while transiting through the safety zone, and (3) regardless of travel direction, vessels shall remain east of the centerline of the main navigation channel. The centerline is depicted on U. S. Electronic Navigational Chart US5PA12M and is a line drawn approximately from 39°53′39″ N, 075°08′11″ W, thence north-northeast to approximate position 39°54′20″ N, 075°07′54″ W. Vessels which do not meet all of the requirements listed above will be prohibited from entering or transiting the safety zone without prior approval of the COTP Delaware Bay. Vessels requesting to enter or transit the safety zone may contact the Sector Delaware Bay Command Center via VHF–FM channel 16.

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.

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 short duration and traffic management of the safety zone. This rule will allow for vessels to transit through the safety zone while the M/V ZHEN HUA 26 moored at Greenwich Terminal in Port of Philadelphia, Pennsylvania if certain requirements are met, and the Coast Guard anticipates that most vessels will be able to freely transit around the safety zone and will not need to seek permission to enter the zone. For these reasons, the impact on waterway traffic is expected to be minimal.

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 a safety zone to be enforced only during the offload of a vessel carrying post-Panamax gantry cranes. It is categorically excluded from further review under paragraph L60(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 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 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.T05–0784, to read as follows:

§ 165.T05–0784 Safety Zone, Delaware River, Philadelphia, PA

(a) *Location.* The following area is a safety zone: All navigable waters bounded to the south by a line drawn from the southeast corner of Pier 124S at 39°53′41″ N, 075°08′19″ W, thence east-southeast to the New Jersey shoreline at 39°53′34″ N, 075°07′49″ W, and bounded to the north by the southernmost edge of the Walt Whitman Bridge. These coordinates are based on the 1984 World Geodetic System (WGS 84).

(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 Delaware Bay (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general safety zone regulations in subpart C of this part and except for as described in paragraph (c)(3) of this section, vessels may not enter, remain in, or transit 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 or remain in the zone, unless moored or anchored outside the main navigational channel, contact the COTP or the COTP's representative via VHF–FM Channel 16. 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.

(3) Vessels may transit the safety zone described in paragraph (a) of this section if all of the following criteria are met:

(i) Vessel shall maintain the minimum safe speed to reduce wake and maintain steerage.

(ii) Except towing vessels designated as assist tugs and operating in such capacity, no vessel may meet, overtake or otherwise pass another unmoored or unanchored vessel within the safety zone.

(iii) Regardless of travel direction, vessels shall remain east of the centerline of the main navigation channel. The centerline is depicted on U. S. Electronic Navigational Chart US5PA12M and is a line drawn approximately from 39°53′39″ N, 075°08′11″ W, thence north-northeast to approximate position 39°54′20″ N, 075°07′54″ W.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* Enforcement of the safety zone will begin when the M/V ZHEN HUA 26 arrives at berth at the Greenwich Terminal in the Port of Philadelphia, Pennsylvania and end at midnight on October 15, 2019.

Dated: September 11, 2019.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2019–20102 Filed 9–17–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2017–0464; FRL–9998–12]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (17–3)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 19 chemical substances which are the subject of premanufacture notices (PMNs). The chemical substances are subject to Orders issued by EPA pursuant to TSCA section 5(e). This action requires persons who intend to manufacture (defined by statute to include import) or process any of these 19 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: This rule is effective on November 18, 2019. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (EST) on October 2, 2019.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after October 18, 2019 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

II. Background

A. What action is the Agency taking?

EPA is finalizing these SNURs under TSCA section 5(a)(2) for 19 substances which were the subject of PMNs. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** of August 27, 2018, (83 FR 43607) (FRL–9982–25), EPA proposed a SNUR for these 19 chemical substances in 40 CFR part 721 subpart E. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** documents for the direct final SNUR of August 27, 2019 (83 FR 43538)(FRL–9982–24). The record for the SNUR was established in the docket under docket ID number EPA–HQ–OPPT–2017–0464. That docket includes information considered by the Agency in developing the proposed and final rules.

EPA received public comments on the proposed rule. Those comments and EPA's responses are found in Unit IV.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

When the Agency issues an order under TSCA section 5(e), TSCA section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the TSCA section 5(e) Order or publish a statement describing the reasons for not initiating the rulemaking. TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four TSCA section 5(a)(2) factors listed in this unit.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from 8 entities on the proposed rule. The Agency's responses are described in this unit.

A. Anonymous Comments

EPA received 5 anonymous comments on the proposed rule. All of these comments were general in nature and not specific to or relevant to any of the proposed SNURs. No response is required.

B. Isocyanates

One commenter commented on proposed SNURs for these isocyanate-based polymers or prepolymers: Polyethylene glycol polymer with aliphatic polycarbodiimide bis(alkoxysilylpropyl) amine blocked (generic) (PMN P–16–99, 40 CFR 721.11098); Blocked polyester polyurethane, neutralized (generic) P–16–363, 40 CFR 721.11101); Alkanediol, 2,2-bis (substituted alkyl)- polymer with substituted alkane, heteromonocycles, alkenoate (generic) (P–17–170, 40 CFR 721.11107); 1,3,5-Triazine-2,4-diamine, 6-phenyl-, reaction products with polyalkylene glycol mono- alkyl ether and 2,4-toluene diisocyanate (generic) (P–17–222, 40 CFR 721.11111); and Fatty acids, polymers with benzoic acid, cyclohexanedicarboxylic acid anhydride, aliphatic diisocyanate, alkyl diol, alkyl triol, pentaerythritol, phthalic anhydride, polyalkylene glycol amine, and aromatic dicarboxylate sulfonic acid sodium salt (generic) (P–17–231, 40 CFR 721.11112).

Comment. The commenter stated that EPA should clarify the proposed SNURs to the extent it is basing them on concerns with excess or residual isocyanate monomers in mixture with an isocyanate-based polymer or prepolymer SNUR chemical. The commenter also stated that EPA has not transparently identified those monomers as being subject to the proposed SNURs and, besides, EPA may not use its SNUR authority to address ongoing uses of the existing isocyanate monomers and must use its TSCA section 6 authority instead.

Response. EPA is concerned about the health effects of any residual monomer as well as unreacted isocyanate groups on a polymer when assessing the risks for new chemical substances. EPA has the authority under TSCA section 5 to address any risks associated with the manufacture, processing, and use of the new chemical substances. The SNUR applies to activities associated with the new chemical substances. Activities associated with the new chemical substance are not ongoing activities of the existing chemical substance. EPA did not receive specific, quantitative information that demonstrates the chemical substance subject to these proposed SNURs exhibit a lower potential for the hazards and potential risks or that they will specifically replace a chemical substance with a higher potential for hazards and risks. EPA is issuing the SNUR as proposed to provide the Agency with the opportunity to review any new uses for potential unreasonable risks. The diisocyanates, MDI and TDI, are well-known dermal and inhalation sensitizers and have been documented to cause asthma, lung damage, and in

severe cases, fatal reactions. EPA is concerned about potential health effects that may result from exposures of consumers or self-employed workers while using products containing uncured (unreacted) MDI and TDI and its related polyisocyanates (*e.g.,* spray-applied foam sealants, adhesives, and coatings) or incidental exposures to the general population. Due to the nature of the potential risk posed by these chemicals, EPA believes it is prudent to emphasize its concern through respiratory protection requirements where there is potential for inhalation exposure, in addition to proposing significant new uses such as consumer use and application method. Accordingly, the regulatory actions for new diisocyanates reflects EPA's policy of consistent treatment of the entire class of potentially hazardous chemicals, regardless of their statutory status as ''new'' or ''existing'' chemicals. EPA continues to work to lessen the apparent inequity between regulations of new and existing chemicals.

Comment. The same commenter stated that EPA should clarify its basis for the imposed limitations on total residual isocyanates, because varying limitations on residual isocyanates appear in the regulatory text for these SNURs, *i.e.,* greater than: 0.2% residual isocyanate (P–16–99), 0.1% residual isocyanate (P–16–363, P–17–170, P–17–222, and P–17–231), and 0.15% residual toluene isocyanate (P–17–222).

Response. For each PMN substance, where there is potential risk from residual chemicals or lower molecular weights if the polymer is manufactured differently, EPA attempts to minimize exposure based on information in the notification. Each of these PMNs contained information that the polymer was manufactured at a certain molecular weight and residual isocyanate level. EPA included restrictions for residual isocyanate in the TSCA section 5(e) Order and the proposed SNUR to prevent potential health risks.

Comment. The same commenter stated that EPA should clarify the basis for the derived New Chemical Exposure Limit (NCEL) of 0.9 mg/m^3 (as an 8-hour time weighted average) for P–16–99. The commenter added that the requirement to develop a validated airborne monitoring method is overly burdensome and unnecessary and EPA should allow company industrial hygienists to use professional judgment instead.

Response. This substance is an alkoxysilane, with some residual isocyanate. The NCEL of 0.9 mg/m^3 was derived using a No Observed Adverse Effect Level from a 90-day study on vinyltrimethoxysilane, as described in the new chemicals program category document for alkoxysilanes at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/new-chemicals-program-under-tsca.* The SNUR does not require manufacturers or processors to develop validated monitoring methods or techniques. A manufacturer would be required to develop validated monitoring methods or techniques if they choose use the NCEL.

Comment. The same commenter stated that EPA should defer personal protective equipment (PPE) and hazard communication provisions to the applicable OSHA requirements.

Response. The TSCA section 5(e) Orders for the chemicals in this SNUR contain worker protection requirements, EPA proposed and is issuing a final SNUR retaining those requirements so that all manufacturers and processors are subject to the same requirements. If the underlying TSCA section 5(e) Orders are modified EPA would consider modifying the SNUR.

Comment. The same commenter stated that EPA should delete the provisions incorporating the recordkeeping requirements in 40 CFR 721.125, as it did in the proposed TDI SNUR, 80 FR 2068 (January 15, 2015), and some others.

Response. The SNURs cited by the commenter are existing chemical SNURs, where EPA determined recordkeeping was not needed. For example, when the significant new use for an existing chemical is ''any use'' there is typically no recordkeeping required because there are no records to be maintained that would inform EPA inspection or enforcement. Because the SNURs in this current rule are new chemical SNURs, EPA will continue to require recordkeeping for all new chemical SNUR to better allow EPA to inspect and enforce SNUR requirements at facilities where chemicals subject to SNURs are manufactured and processed.

C. Deviation From EPA's PBT Policy

Comment. One commenter suggests that EPA has deviated from its Persistent, Bioaccumulative, and Toxic (PBT) New Chemical Substances Testing Policy (see final policy statement at 64 FR 60194; November 4, 1999) and failed to explain those deviations. Comments relate to the chemical substances described in PMNs P–15–719, P–16–221, P–17–177, P–17–247, and P–17–248, which met criteria identified in the 1999 Policy Statement for persistence, bioaccumulation potential, and toxicity that would indicate they should be controlled more stringently, up to a ban on commercialization pending development of certain testing.

Response. These comments constitute challenges to certain TSCA section 5(a)(3) determinations rather than to the basis for or the content of the SNURs. EPA is not responding to these comments in this notice and declines to withdraw the SNURs on the basis of these comments, since they are not relevant to this rulemaking. The 1999 policy statement, which is not a rule, provides guidance criteria for persistence, bioaccumulation, and toxicity for new chemicals and advises the industry about our regulatory approach for chemicals meeting the criteria. Establishment of a PBT category alerts potential PMN submitters to possible assessment or regulatory issues associated with PBT new chemicals review. It also provides a vehicle by which the Agency may gauge the flow of PBT chemical substances through the TSCA New Chemicals Program and measure the results of its risk screening and risk management activities for PBT new chemical substances; as such, it is a major element in the Agency's overall strategy to further reduce risks from PBT pollutants.

The TSCA section 5(e) Orders for these PMNs do state that EPA estimates that the substances will persist in the environment for more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. The policy statement notes that even for ''very'' P (persistence in the environment for more than six months) and ''very'' B cases (bioaccumulation factor of greater than 5,000), where ''because of the increased concern, more stringent control action would be a likely outcome, . . . it would not be appropriate to automatically trigger a ''ban pending testing'' at these cutoffs given the uncertainties about substance properties, release, and environmental behavior that normally characterize PMN review.'' Accordingly, the Agency evaluates each PMN based on the use, exposure and release information submitted, and makes a case by case risk management decision. The proposed SNUR terms for these substances reflect the Agency's determination under their respective TSCA section 5(e) Orders, that the controls stipulated in those TSCA section 5(e) Orders are protective or human health and environment, pending submission of further information that is identified in the TSCA section 5(e) Orders.

D. Ad Hoc Testing Policy Change

Comment. One commenter noted that EPA has instituted an *ad hoc* testing

policy change without acknowledging it has done so and without meeting TSCA's requirements. With these proposed SNURs, the commenter continues, EPA has implemented a significant departure from past policy and practice by ceasing to include any testing requirements or identifying any recommended testing. Instead, the commenter states, each chemical-specific description in Unit IV. of the proposed rule only identifies ''potentially useful information'' that EPA indicates is only being ''provided for informational purposes;'' EPA has not defined what it means for information to be only potentially useful and why EPA does not identify the information as useful or necessary. Finally, the commenter states that, moreover, EPA provides no explanation for why it no longer identifies testing as ''recommended testing,'' as it previously did, and instead only describes the associated information as ''potentially useful.''

Response. The comment pertains to the preamble of each SNUR, which are not requirements for testing. EPA has modified language in its regulatory documents to ensure consistency with TSCA section 4(h) requirements to reduce testing on vertebrates to the extent practicable. TSCA section 5(e) Orders will now contain a statement of need that explains the basis for any decision that requires the use of vertebrate animals. In addition, EPA is modifying language in its legal documents describing test requirements to reflect a preference for tiered testing and use of non-vertebrate testing strategies first and using that test data to inform whether higher tiered testing (including testing of vertebrates) is necessary. Similarly, EPA is modifying language in its SNURs to more generally describe the information EPA believes would help characterize chemical properties, fate and/or the potential human health and environmental effects associated with a significant new use of the chemical substance, rather than list specific recommended tests. EPA is encouraging companies to consult with the Agency on the potential for use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs) to generate data to inform risk assessment. EPA encourages dialogue with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

E. Consistency Between SNURs and TSCA Section 5(e) Orders

Comment. One commenter noted that for P–16–0533, P–16–0570, P–16–0363, P–17–0170, P–17–0179, and P–17–0247–48, the corresponding TSCA section 5(e) Orders prohibit distribution of the substance until it has been completely cured, while the proposed SNURs do not contain a corresponding notification requirement applicable to a company that intends to distribute the uncured substance. The commenter concludes that the final SNURs must do so. The commenter further notes that for P–16–0595 and P–17–0260 the proposed SNURs state that ''[t]he requirements of this section do not apply to quantities of the substance after they have been reacted (cured),'' while the underlying TSCA section 5(e) Order contains no such provision to lift its restrictions. The commenter concludes that the final SNURs should not provide an exemption from the requirements of the SNUR where such an exemption is not provided in the TSCA section 5(e) Orders.

Response. For P–16–370 (P–16–570 is not contained in the proposed SNUR), P–16–363, P–17–170, P–17–179, and P–17–247–248, the TSCA section 5(e) Orders do not prohibit distribution of the substances until they are completely reacted (cured). The TSCA section 5(e) Orders allow distribution under certain conditions. The terms of the TSCA section 5(e) Orders including the distribution requirements are exempted for these PMNs when they have been fully reacted (cured). The final SNURs for these substances will contain the same exemption. Manufacturers and processors distributing chemicals in commerce subject to SNURs are subject to the notification requirements found in 40 CFR 721.5(a)(2). The TSCA section 5(e) Orders for P–16–533, P–16–595, and P–17–260 do not contain an exemption if the substance is completely reacted (cured). To be consistent with the TSCA section 5(e) Order, the final SNURs for these three substances will not contain that exemption.

F. Generic Chemical Names Must Comply With the Requirements of TSCA and EPA's Guidance

Comment. One commenter noted that prior to finalizing the SNUR for certain chemical substances identified, EPA must ensure that the generic names for these chemicals comply with the law and conform to EPA's Generic Name Guidance (83 FR 30173; June 27, 2018). The commenter continued that despite TSCA's requirement for generic names to be specific as practicable, and EPA's stated preference in its guidance for masking only a single structural element, we have identified a number of generic names covered by proposed SNURs that are or appear to be far from sufficiently specific. The specific chemical substances identified in this batch proposed SNUR were P–16–0221: Fluorinated organopolysilazane; P–16–0370: Methoxy-terminated polysiloxanes; P–16–0376: Hydroxystyrene resin; P–17–0179: Modified carboxypolyamine salt; P–17–0247: Branched alkyl (C=17) carboxylic acid; and P–17–0248: Branched alkyl (C=18) alcohol.

Response. The statute, regulations, and guidance stipulate that generic names should be as specific as practicable and reveal the specific chemical identity to the maximum extent possible. See TSCA section 14(c)(1)(C), 40 CFR 720.85(a)(2–3), and ''*Guidance for Creating Generic Names for Confidential Chemical Substance Identity Reporting under TSCA*'' (see 83 FR 30173; June 27, 2018). EPA declares PMNs incomplete if they include generic names for confidential substances that are overly generic. However, EPA more thoroughly examines generic names provided after commencement of manufacture or import (*i.e.,* in a Notice of Commencement, or NOC), in accordance with 40 CFR 720.85(b)(6). Because this may occur after finalization of a SNUR, a generic name provided in a SNUR may be improved upon regarding its specificity at a later date when the NOC is submitted to the Agency. Persons should also keep in mind that they do not have the benefit of seeing the full chemical identities of confidential substances which is necessary for determining the acceptability of generic names for such substances. Generic names that may appear overly generic may be acceptable for simple chemical substances that have very few functional groups or structural features.

G. Generic Use Descriptions

Comment. One commenter noted that despite EPA having provided PMN submitters instructions to the contrary, many of these generic use descriptions are overly broad or vague. The commenter provided these examples in this batch proposed SNUR: P–16–363: open, non-dispersive use; P–16–595: polymer; P–17–260: resin modifier; P–17–222: additive open non-dispersive use; and these described by the commenter as ''slightly better'': P–16–99: additive for industrial coatings; P–16–359: pigment additive for industrial

coatings; P–16–376: photolithography; and P–17–247/48: chemical raw materials. The commenter stated that these generic use descriptions do not comply with EPA's own 2015 ''Instruction Manual for Reporting under the TSCA § 5 New Chemicals Program,'' which calls for the generic use description to include *both* (1) a description of the category of use, which ''should reveal the intended category of use to the maximum extent possible;'' and (2) a characterization of the ''degree of containment,'' with examples cited such as ''destructive use'' or ''open, non-dispersive use.'' Both components are needed; EPA's manual states: ''a generic use description that solely describes the degree of containment such as 'open, non-dispersive use' is not acceptable.'' While a few of the examples cited previously come closer than others, the commenter concludes, none of them comply with the instructions.

Response. EPA notes the generic use description issue, with regards to PMN reporting. However, this comment does not pertain to the findings or requirements of the proposed SNURs. Accordingly, EPA is not making any changes to the final SNURs based on these comments.

H. Significant New Uses Should Be for Any Uses Other Than What EPA Has Evaluated

Comment. One commenter suggested that EPA should generally designate as a significant new use any use of a chemical substance other than the specific uses EPA evaluated in its PMN review and determined are not likely to present an unreasonable risk. The commenter identified P–17–247/248 as SNURs where the specific use is claimed as confidential by the PMN submitter, but the TSCA section 5(e) Order and SNURs restrict generically to use only as an intermediate, and it is not clear that EPA examined other intermediate uses beyond the specific use identified in the PMNs. The commenter believes that EPA must also require notification for any type of chemical intermediate use other than that which EPA has reviewed. The commenter also noted that the SNURs for P–16–359 and 16–370 do not include designation of *any* use that would require notification (only process restrictions, no consumer use, application method, etc.).

Response. The commenter suggested approach is overly broad. TSCA requires that EPA evaluate new chemicals under their conditions of use, including the intended, known and reasonably foreseen circumstances of manufacture, processing, distribution in commerce, use and disposal. Based upon EPA's review of the relevant PMNs, the Agency identified uses that are appropriate for designation as ''significant new uses'' in order to ensure that EPA has an opportunity to review those uses in a SNUN submission at a later date and address any unreasonable risks at that time. TSCA section 5(a)(2) does not require EPA to take the broad approach advocated by the commenter. EPA believes a more tailored approach is warranted to avoid unduly burdensome regulations.

I. Misleading Use of 40 CFR 721.80 Reference

Comment. One commenter noted that certain proposed SNURs state that a significant new use related to Industrial, commercial, and consumer activities is listed as ''requirements as specified in § 721.80'' without specifying one of the 25 possible restrictions in that section.

Response. EPA understands the confusion and has deleted reference to 40 CFR 721.80 where no specific section is cited and simply writes the applicable significant new use, *i.e.,* ''*Industrial, commercial, and consumer activities.* It is a significant new use to . . . .''

J. Consistency Between TSCA section 5(e) Orders and SNURs: Hierarchy of Controls

Comment. One commenter stated that the provisions in many of the proposed SNURs that address ''protection in the workplace'' are not consistent with the underlying TSCA section 5(e) Orders, and unlike the TSCA section 5(e) Orders, do not accurately and sufficiently invoke the Industrial Hygiene Hierarchy of Controls (HOC), which is a foundational element of OSHA and NIOSH policy. The commenter also cites two TSCA section 5(e) Orders or preambles to the SNURs for P–16–221 and P–16–370 that either fail to include language requiring preference for engineering and administrative controls over PPE or only include a general statement that encourages such controls.

Response. EPA believes that although the SNURs may not precisely mimic the language in the underlying TSCA section 5(e) Orders, the SNURs do incorporate the same requirements for HOC as found in the TSCA section 5(e) Orders. The commenter refers to this language generally used in TSCA section 5(e) Orders: ''Engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible to each person who is reasonably likely to be [dermally exposed/exposed by inhalation] in the work area to the PMN substance * * *. Where engineering, work practice, and administrative controls are not feasible or, if feasible, do not prevent exposure, each person subject to this exposure must be provided with, and is required to wear, [personal protective equipment]. * * *'' The corresponding SNUR language is shortened to this: ''engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible''. The language in the specific references under 40 CFR 721.63(a) regarding establishing a program to protect workers incorporates both the HOC and worker protection requirements of the SNUR. EPA believes that the intent and requirements are identical between the TSCA section 5(e) Orders and SNURs and that adding a phrase referring to PPE where engineering controls are not feasible would not serve to further clarify this SNUR notification requirement.

K. SNURs Should Include Workplace Protection Provisions Under 40 CFR 721.63

Comment. The same commenter noted that many of the SNURs do not include specific provisions to incorporate requirements for protection in the workplace regulations codified at 40 CFR 721.63. Specific SNURs cited were for PMNs P–16–376, P–16–595, P–17–172, P–17–222, P–17–231, and P–17–260. None of the TSCA section 5(e) Orders contained workplace controls.

Response. For the TSCA section 5(e) Orders listed, EPA achieved the necessary risk reduction in the workplace via provisions other than specific worker protection requirements. For P–16–376, the TSCA section 5(e) Order requires manufacture of the substance at a certain molecular weight and molecular weight distribution that effectively controls risk ''upstream,'' for the inherent hazard of the substance. For P–16–595, the TSCA section 5(e) Order requires certain (confidential) conditions of use that address potential risk. A bona fide and SNUN would be required before any other conditions of use can be evaluated and approved. For P–17–172, P–17–222, and P–17–260, lung toxicity concerns are addressed by prohibition on inhalation exposures, plus (in the case of P–17–222, a

limitation on isocyanate residuals). P–17–231 achieves risk reduction solely via restriction on residual isocyanate in the manufactured substance.

L. Deferring Workplace Protections to OSHA or NIOSH

Comment. One commenter favored the idea that EPA should leave workplace protection to OSHA and NIOSH. Another commenter argued against that view, stating that nothing in the TSCA statute supports the assertion that EPA should rely on OSHA to regulate new chemicals in the workplace, *see* 15 U.S.C. 2604(f)(5); and due to the limitations on OSHA's authority, the protections for workers would not meet TSCA's requirement to ''protect against an unreasonable risk of injury to health or the environment.'' 15 U.S.C. 2604(e).

Response. To the extent these comments argue that the Agency should or should not have issued orders under sections 5(e) or 5(f) of TSCA that include worker protection conditions, EPA believes they are beyond the scope of the SNUR for which EPA specifically solicited comments and are properly directed to the TSCA section 5(a)(3) determinations that pertain to the underlying PMNs for the SNUR. EPA is therefore not responding to these comments.

However, EPA in response to comments that pertain specifically to the SNUR, *i.e.,* those regarding the uses that should be subject to the SNUR, as well as the assertion that EPA must include certain worker protection provisions in the SNURs on the basis of TSCA section 5(f)(4), EPA disagrees with the comment that, with respect to scenarios where EPA expects that worker protection requirements under other federal/state authorities would mitigate risks to workers, EPA must designate all uses without those protections as ''significant new uses''. TSCA section 5(a)(2) does not mandate that any specific uses be designated as significant. Instead, EPA has discretion as to which new uses to designate as significant. In exercising its discretion under TSCA section 5(a)(2), EPA expects compliance with federal and state laws, such as worker protection standards or disposal restrictions, unless case-specific facts indicate otherwise. Further, any workplace risks will be mitigated if exposures are appropriately controlled, and EPA expects that employers will require and workers will use the appropriate controls (*e.g.,* personal protective equipment such as impervious gloves and/or respirators), consistent with the Safety Data Sheet prepared by the PMN submitter, in a manner adequate to protect them.

M. Clarification of SNUR for P–17–222 (40 CFR 721.11111)

Comment. One commenter noted that in this proposed SNUR, EPA placed a notification requirement based on the concentration of residual isocyanate in the chemical as imported but has failed to include a similar express notification requirement on manufacturing. Specifically, the proposed SNUR (and the corresponding TSCA section 5(e) Order) states that ''[i]t is a significant new use to *import* the chemical substance containing greater than 0.15 percent residual isocyanate.'' As written, the commenter continues, the TSCA section 5(e) Order and SNUR appear to allow domestic manufacture of the chemical without any limit on the residual level of isocyanate.

One commenter also noted that for P–17–222, the TSCA section 5(e) Order restricts the chemical to be imported ''to contain maximum residual of *toluene diisocyanate (TDI)* no greater than 0.15 weight percent.'' In contrast, the proposed SNUR states that a significant new use is ''import [of] the chemical substance containing greater than 0.15 percent *residual isocyanate.*'' The TSCA section 5(e) Order also prohibits *processing and use* of the chemical if it ''contain[s] residual of toluene diisocyanate (TDI) greater than 0.15 weight percent.'' In contrast, the SNUR applies that numerical residual limit only to import of the substance. In order to be consistent with the TSCA section 5(e) Order, the commenter states, the final SNUR must designate as a significant new use any import, *processing,* or *use* of the chemical containing greater than 0.15 percent residual *toluene diisocyanate (TDI).*

Response: The Agency agrees that there was an oversight in the proposed rule. The final SNUR for that chemical substance is corrected to read ''It is a significant new use to manufacture, process, or use the chemical substance containing greater than 0.15 percent residual toluene isocyanate.'' Note that manufacture includes import. In addition, the previous sentence in the same proposed SNUR will be corrected to read ''It is a significant new use to modify the manufacture, process or use activities if it results in inhalation exposure to vapor, mist, aerosol, or dust *of* (replacing *to*) the substance.''

N. CBI and Disclosure of Health and Safety Information

Comment. One commenter stated that TSCA does not extend CBI protection to any health and safety study which is submitted under TSCA, including underlying information and occupational exposure studies. In addition to the scientific analyses developed by EPA (*e.g.,* engineering reports, Structure Activity Team reports), which fall under this definition, other information that is generally required to be submitted with PMNs, such as toxicity studies, information on worker exposure, and the majority of information in Safety Data Sheets, also fall under this definition. EPA must disclose this information to the public. Despite these mandates, the commenter argues that EPA has failed to disclose this health and safety information. The comment states that EPA's SAT reports, engineering reports, and exposure reports all constitute or contain health and safety information that EPA must disclose, yet for P–16–359 (as an example provided by the commenter) EPA has largely redacted these documents.

Response. EPA recognizes that TSCA section 14 does not protect from disclosure certain confidential information described in TSCA section 14(b), including health and safety information. However, TSCA section 14 does not require that EPA make a final confidentiality determination for all information submitted under TSCA and claimed as CBI as part of a PMN review, and EPA has not made a determination regarding the eligibility for confidential treatment of the information referenced in the comment. Here, EPA balanced the need for sufficient information in the public record to fully explain the bases for its decisions with the protections for CBI in TSCA section 14. With regard to EPA technical support reports underlying the section 5 determination, they are not covered by TSCA section 14(b)(2), which specifically refers to health and safety studies submitted to EPA. EPA provided sufficient information in the public record to fully explain the bases for its decisions while preserving the submitter's confidentiality claims.

O. Vertebrate Testing

Comment. A commenter cited the TSCA section 5(e) Orders for P–15–719, P–16–99, P–16–221, P–16–370, P–16–487, P–16–533, P–17–170, P–17–179, and P–17–247 that require animal testing by a specified production volume. The commenter requested that wherever EPA require vertebrate animal testing, it include the statutorily-mandated explanation of the bases for the such decision in each particular case. In addition, the commenter requested that EPA contact the PMN

submitters for P–16–533, P–17–170, and P–17–247 to inform them that the local lymph node assay for skin sensitization should be replaced with a defined approach as identified in section 5 of the draft EPA policy document *Strategic Plan to Promote the Development and Implementation of Alternative Test Methods Within the TSCA Program* (see *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/strategic-plan-reduce-use-vertebrate-animals-chemical).*

Response. A request to review compliance with TSCA section 4(h)(3) for PMNs and TSCA section 5(e) Orders is not relevant to the proposed SNUR. Because SNURs do not require testing and only suggest the type of information that could address hazards identified by EPA, they include opportunities for EPA to engage submitters considering conducting testing. For SNURs with time or production volume limits, or if a SNUN submitter is required to conduct testing, EPA will include consideration of TSCA section 4(h)(3). When a company consults with EPA before submitting any SNUN as recommended by EPA when issuing SNURs, EPA will also have an opportunity to consider what testing if any should be conducted including consideration of TSCA section 4(h)(3).

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 19 chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the original August 27, 2018 direct final rule (83 FR 43538) (9982–24), EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the TSCA section 5(e) Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of each rule specifies the activities designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

These final rules include 19 PMN substances that are subject to Orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those TSCA section 5(e) Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA section 5(e) Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) Order usually requires, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELs provisions in TSCA section 5(e) Orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) Order for the same chemical substance.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for all 19 chemical substances regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA section 5(e) Orders with a SNUR that identifies the absence of those protective measures as Significant New Uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA section 5(e) Orders, consistent with TSCA section 5(f)(4).
- To receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/*

existingchemicals/pubs/tscainventory/index.html.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) Orders have been issued for all the chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) Orders from undertaking activities which will be designated as significant new uses. The identities of all 19 chemical substances subject to this rule have been claimed as confidential and EPA has not received any post-PMN *bona fide* submission (per 40 CFR 720.25 and 721.11) for a chemical substance covered by this action. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Furthermore, EPA designated August 27, 2018 (the date of public release of the proposed and direct final rules) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of August 27, 2018, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons will have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception:

If a person is required to submit information for a chemical substance pursuant to a rule, order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the original direct final SNUR (83 FR 43538) lists potentially useful information for all SNURs listed here. Descriptions of this information is provided for informational purposes. The potentially useful information identified will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing on vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

In certain of the TSCA section 5(e) Orders for the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same production volume limits as the TSCA section 5(e) Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the TSCA section 5(e) Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request

EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2017–0366.

XII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.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 establishes SNURs for several new chemical substances that were the subject of PMNs and TSCA section 5(e) Orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its

general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks disproportionately affecting children.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 3, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add §§ 721.11097 through 11115 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances.	
* * * * *	
721.11097	2070–0012
721.11098	2070–0012
721.11099	2070–0012
721.11100	2070–0012
721.11101	2070–0012
721.11102	2070–0012
721.11103	2070–0012
721.11104	2070–0012
721.11105	2070–0012
721.11106	2070–0012
721.11107	2070–0012
721.11108	2070–0012
721.11109	2070–0012
721.11110	2070–0012
721.11111	2070–0012
721.11112	2070–0012
721.11113	2070–0012
721.11114	2070–0012
721.11115	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.11097 to subpart E to read as follows:

§ 721.11097 Benzene, 1,4-bis(alkyl)-, homopolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically benzene, 1,4-bis(alkyl)-, homopolymer (PMN P–15–719) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentrations set at 1.0 percent), (f), (g)(4)(i), (iii), and (g)(5). Alternative hazard and warning

statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (2), (b)(1), (2), (c)(1), and (2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 5. Add § 721.11098 to subpart E to read as follows:

§ 721.11098 Polyethylene glycol polymer with aliphatic polycarbodiimide bis(alkoxysilylpropyl) amine blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyethylene glycol polymer with aliphatic polycarbodiimide bis(alkoxysilylpropyl) amine blocked (PMN P–16–99) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health with an assigned protection factor of at least 10), (a)(6)(particulate), (b)(concentrations set at 1.0 percent) and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.9 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 1.0 percent), (f), (g)(1)(ii), (g)(2)(ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.9 mg/m3), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q) and (t). It is a significant new use to manufacture, process, or use the chemical substance for consumer use or for commercial uses that could introduce the substance into a consumer setting. It is a significant new use to manufacture the chemical substance containing greater than 0.2% residual isocyanate.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 6. Add § 721.11099 to subpart E to read as follows:

§ 721.11099 Fluorinated organopolysilazane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a fluorinated organopolysilazane (PMN P–16–221) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (v), (vi), (b)(concentrations set at 1.0 percent), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (p)(204 kilograms) and (s)(100 kilograms). It is a significant new use to use the substance other than in the confidential coating system allowed in the corresponding TSCA section 5(e) Order.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 7. Add § 721.11100 to subpart E to read as follows:

§ 721.11100 Carbopolycycle-bis(diazonium), dihalo-, chloride (1:2), reaction products with metal hydroxide, 4-[(dioxoalkyl)amino] substituted benzene, 2-[(dioxoalkyl) amino] substituted benzene, 5-[(dioxoalkyl)amino]-2-hydroxy-substituted benzene and oxo-n-phenylalkanamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbopolycycle-bis(diazonium), dihalo-, chloride (1:2), reaction products with metal hydroxide, 4-[(dioxoalkyl) amino] substituted benzene, 2-[(dioxoalkyl) amino] substituted benzene, 5-[(dioxoalkyl) amino] 2-hydroxy-substituted benzene and oxo-n-phenylalkanamide (PMN P–16–359) is subject to reporting under this section for the significant

new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (b)(concentrations set at 0.1 percent) and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 0.1 percent), (f), (g)(1)(iv), (vii), (g)(2)(i), (ii), (do not process or use at greater than 200 degrees Celsius), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (q). It is a significant new use to process or use the PMN substance at a temperature greater than 200 degrees C.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 8. Add § 721.11101 to subpart E to read as follows:

§ 721.11101 Blocked polyester polyurethane, neutralized (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as blocked polyester polyurethane, neutralized (PMN P–16–363) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(2)(i) through (iii), (a)(3), (a)(6)(particulate), (v), (vi) (b)(concentrations set at 0.1 percent) and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 0.1 percent), (f), (g)(1)(i), (ii), (g)(2)(i), (ii), (iii), (iv), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance with a residual of free isocyanate monomers greater than 0.1 percent by weight. It is a significant new use to modify manufacture, process or use activities if it results in inhalation exposure to vapor, dust, mist or aerosols to the substance. It is a significant new use to manufacture, process, or use the substance for consumer use or for commercial uses that could introduce the substance into a consumer setting. It is a significant new use to manufacture, process, or use the substance other than in an aqueous formulation.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. Add § 721.11102 to subpart E to read as follows:

§ 721.11102 Methoxy-terminated polysiloxane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methoxy-terminated polysiloxane (PMN P–16–370) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), (a)(4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 25), (a)(6)(particulate), (v), (vi), (b)(concentrations set at 1.0 percent), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 8.4 milligrams per cubic meter as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 1.0 percent), (f), (g)(1)(i), (ii), (g)(2)(i), (ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 8.4 mg/m3), (g)(2)(v), (do not use for spray application), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q), and (y)(1). It is a significant new use to manufacture, process, or use the substance for consumer use or for commercial uses that could introduce the substance into a consumer setting.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 10. Add § 721.11103 to subpart E to read as follows:

§ 721.11103 Hydroxystyrene resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hydroxystyrene resin (PMN P–16–376) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. It is a significant new use to manufacture the PMN substance with an average molecular weight less than 2906 daltons and to have greater than 0.5 percent low weight molecular species less than 500 daltons and 1.0 percent low weight molecular species less than 1000 daltons.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 11. Add § 721.11104 to subpart E to read as follows:

§ 721.11104 Benzenesulfonic acid 1,2-diazenediylbis[6-ethenyl]-3-sulfophenyl diazenyl-2-sulfophenyl ethenyl salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzenesulfonic acid 1,2-diazenediylbis[6-ethenyl]-3-sulfophenyl diazenyl-2-sulfophenyl ethenyl salt (PMN P–16–487) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set 1.0 percent), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 1.0 percent), (f), (g)(1)(iv), (vi), (ix), (blood effects), (g)(2)(i), (v), (g)(3)(i), (ii), (g)(4)(water release restrictions apply), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (k), and (q). It is a significant new use to import the substance other than in solution.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 55.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 12. Add § 721.11105 to subpart E to read as follows:

§ 721.11105 Ethanaminium, alkyl-, salt with triazole (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethanaminium, alkyl-, salt with triazole (PMN P–16–533) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (v), (vi), (b)(concentration set 0.1 percent), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 0.1 percent), (f), (g)(1)(i), (iii), (v), (vii), (ix), (g)(2)(i) through (iii), (v), (g)(3)(i), (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to modify the manufacture, process or use activities if it results in inhalation exposure to vapor, dust, mist or aerosols to the substance.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 13. Add § 721.11106 to subpart E to read as follows:

§ 721.11106 Substituted-(hydroxyalkyl)-alkyl-alkanoic acid, hydroxy-(substitutedalkyl)-alkyl-, polymer with alpha-hydro-omega-hydroxypoly[oxy (alkylethanediyl)] and isocyanato-(isocyanatoalkyl)-multialkylcycloalkane, salt, alkanol-blocked, compds. (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted-(hydroxyalkyl)-alkyl-alkanoic acid, hydroxy-(substitutedalkyl)-alkyl-, polymer with alpha-hydro-omega-hydroxypoly [oxy(alkylethanediyl)] and isocyanato-(isocyanatoalkyl)-

multialkylcycloalkane, salt, alkanol-blocked, compds. (PMN P–16–595) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k). It is a significant new use to import the substance other than as required in the corresponding TSCA section 5(e) Order.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 14. Add § 721.11107 to subpart E to read as follows:

§ 721.11107 Alkanediol, 2,2-bis (substituted alkyl)- polymer with substituted alkane, heteromonocycles, alkenoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanediol, 2,2-bis (substituted alkyl)- polymer with substituted alkane, heteromonocycles, alkenoate (PMN P–17–170) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set 0.1 percent), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72 (a) through (e)(concentration set 0.1 percent), (f), (g)(1)(i), (ii), (v), (vii), (ix), (g)(2)(i), (v), (g)(4) and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (ultraviolet curable coating resin for three-dimensional printing applications) and (p)(105,000 kilograms). It is a significant new use to modify the manufacture, process or use activities if it results in inhalation exposure to vapor, dust, mist or aerosols to the substance. It is a significant new use to manufacture the chemical substance containing greater than 0.1 percent residual isocyanate or an average molecular weight below 1,000 daltons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 15. Add § 721.11108 to subpart E to read as follows:

§ 721.11108 Sulfurized alkylphenol, calcium salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfurized alkylphenol, calcium salts (PMN P–17–172) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to modify the manufacture, process or use activities if it results in inhalation exposure to vapor, dust, mist or aerosols to the substance.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 16. Add § 721.11109 to subpart E to read as follows:

§ 721.11109 Monoheteropentacycloalkane-4-carboxylic acid, substituted cyclo-alkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as monoheteropentacycloalkane-4-carboxylic acid, substituted cyclo-alkyl ester (PMN P–17–177) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set 0.1 percent), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 0.1 percent), (f), (g)(1)(i), (ii), (iv), (vi), (vii), (ix), (skin, eye, and mucous membrane irritation), (g)(2)(i) through (iii), (v), (g)(3)(i), (ii), (g)(4)(i) through (iii) and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 17. Add § 721.11110 to subpart E to read as follows:

§ 721.11110 Modified carboxypolyamine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as modified carboxypolyamine salt (PMN P–17–179) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iv), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (v), (vi), (b)(concentration set 0.1 percent), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 0.1 percent), (f), (g)(1)(i), (ii), (g)(2)(i), (ii), (v), (g)(3)(i), (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k)(dispersive additive for pigments in industrial paints and coatings) and (q). It is a significant new use to process or use the substance in a paint or coating formulation greater than 1 percent by weight or volume. It is a significant new use to process or use the substance resulting in inhalation exposure to a vapor, dust, mist or aerosol at greater than 1 percent by weight or volume.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 18. Add § 721.11111 to subpart E to read as follows:

§ 721.11111 1,3,5-Triazine-2,4-diamine, 6-phenyl-, reaction products with polyalkylene glycol mono- alkyl ether and 2,4-toluene diisocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 1,3,5-triazine-2,4-diamine, 6-phenyl-, reaction products with polyalkylene glycol mono- alkyl ether and 2,4-toluene diisocyanate (PMN P–17–222) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance in a formulation for the use allowed in the corresponding TSCA section 5(e) Order with isocyanate residuals greater than 0.1 percent by weight or volume. It is a significant new use to manufacture, process, or use the substance for consumer use or for commercial uses that could introduce the substance into a consumer setting. It is a significant new use to modify the manufacture, process or use activities if it results in inhalation exposure to vapor, dust, mist or aerosols of the substance. It is a significant new use to manufacture, process, or use the substance containing greater than 0.15 percent residual toluene diisocyanate.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 19. Add § 721.11112 to subpart E to read as follows:

§ 721.11112 Fatty acids, polymers with benzoic acid, cyclohexanedicarboxylic acid anhydride, aliphatic diisocyanate, alkyl diol, alkyl triol, pentaerythritol, phthalic anhydride, polyalkylene glycol amine, and aromatic dicarboxylate sulfonic acid sodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids, polymers with benzoic acid, cyclohexanedicarboxylic acid anhydride, aliphatic diisocyanate, alkyl diol, alkyl triol, pentaerythritol, phthalic anhydride, polyalkylene glycol amine, and aromatic dicarboxylate sulfonic acid sodium salt (PMN P–17–231) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. It is a significant new use to manufacture the chemical substance containing greater than 0.1 percent residual isocyanate.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add § 721.11113 to subpart E to read as follows:

§ 721.11113 Branched alkyl (C=17) carboxylic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as branched alkyl (C=17) carboxylic acid (PMN P–17–247) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The

requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) through (iii), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set 1.0 percent), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72 (a) through (e)(concentration set 1.0 percent), (f), (g)(1)(irritation), (sensitization), (iv), (vi), (ix), (g)(2)(i) through (iii), (v), (g)(3)(i), (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (g) and (q). It is a significant new use to modify the manufacture, process or use activities if it results in inhalation exposure to vapor, dust, mist or aerosols to the substance.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 21. Add § 721.11114 to subpart E to read as follows:

§ 721.11114 Branched alkyl (C=18) alcohol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as branched alkyl (C=18) alcohol (PMN P–17–248) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set 1.0 percent), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 1.0 percent), (f), (g)(1)(irritation), (sensitization), (iv), (vi), (ix), (g)(2)(i) through (iii), (v), (g)(3)(i) and (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (g) and (q). It is a significant new use to modify the manufacture, process or use activities if it results in inhalation exposure to vapor, dust, mist or aerosols to the substance.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 22. Add § 721.11115 to subpart E to read as follows:

§ 721.11115 Alkoxy silane modified butadiene styrene copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkoxy silane modified butadiene styrene copolymer (PMN P–17–260) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to modify the manufacture, process or use activities if it results in inhalation exposure to vapor, dust, mist or aerosols of the substance.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

[FR Doc. 2019–19666 Filed 9–17–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2017–0414; FRL–9999–26]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 26 chemical substances which are the subject of premanufacture notices (PMNs) and deferring action on one chemical substance. The chemical substances are subject to Orders issued by EPA pursuant to section 5(e) of TSCA. This action requires persons who intend to manufacture (defined by statute to include import) or process any of these 26 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use,

under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: This rule is effective on November 18, 2019. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on October 2, 2019.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after October 18, 2019 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

II. Background

A. What action is the Agency taking?

EPA is finalizing these SNURs under TSCA section 5(a)(2) for 26 substances which were the subject of PMNs. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity. EPA is not finalizing the proposed SNUR at 40 CFR 721.11082 on the chemical substance that is the subject of PMN P–16–543, because the Agency is currently reviewing data submitted in support of a request to modify the underlying TSCA 5(e) Order that forms the basis for the proposed SNUR.

In the **Federal Register** of August 17, 2018 (83 FR 41039) (FRL–9981–82), EPA proposed a SNUR for 27 chemical substances in 40 CFR part 721, subpart E and reopened the public comment period in the **Federal Register** of October 15, 2018 (83 FR 51911) (FRL–9984–69). This reopened comment period closed on October 30, 2018. A direct final rule was also published on August 17, 2018 (83 FR 40986) (9971–37) but withdrawn on October 11, 2018 (83 FR 51360) (9984–71) when EPA received notices of intent to submit adverse comments on these SNURs. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** documents proposing the SNUR. The record for the SNUR was established under docket ID number EPA–HQ–OPPT–2017–0414. That docket includes information considered by the Agency in developing the proposed and final rules.

EPA received public comments on the proposed rule. Those comments and EPA's responses are found in Unit IV.

B. What is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)).

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

When the Agency issues an Order under TSCA section 5(e), TSCA section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the Order or publish a statement describing the reasons for not initiating the rulemaking. Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.

• The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

• The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

• The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from 12 entities on the proposed rule. The Agency's responses are described in this unit.

A. Anonymous Comments

Comment. EPA received two anonymous comments on the proposed rule. One of these comments was general in nature and did not pertain to the proposed rule.

Response: No response is required. The second anonymous comment—also repeated by another commenter—related to the proposed SNUR for a chlorofluorocarbon (P–16–150, 40 CFR 721.11078). This will be covered separately in this unit, under the subheading: ''*Protection of groundwater and source water from CFC contamination*''.

B. Chlorinated Paraffins (CPs)

EPA received comments from six entities related to the proposed SNURs for chlorinated paraffins (CPs): 40 CFR 721.11068 (P–12–277), 40 CFR 721.11069 (P–12–278), 40 CFR 721.11070 (P–12–280), 40 CFR 721.11071 (P–12–281), 40 CFR 721.11072 (P–12–282 and P–14–684), 40 CFR 721.11073 (P–12–283 and P–14–683), 40 CFR 721.11074 (P–12–284), 40 CFR 721.11075 (P–12–433), 40 CFR 721.11076 (P–12–453), and 40 CFR 721.11077 (P–12–505).

a. Ongoing Uses Under Old Chemical Abstract Service (CAS) Registry Numbers

Comment: The commenters stated that manufacturers of these chemicals are already engaging in ongoing uses; new CAS registry numbers have been given to chemicals already in use and these new CAS registry numbers take time to be shared downstream and for companies to figure out if the SNUR substances are present in supply chains. The commenters add that CPs should be moved to TSCA section 6 (EPA's existing chemicals program) for a long-term regulatory remedy.

Response: The Agency is aware that CPs have been in commerce globally for over 70 years. However, in 2009, EPA informed the U.S. manufacturers of CPs that they were using the wrong CAS numbers for the CPs that are the subject of these SNURs. Those CPs were not properly listed on the TSCA Inventory, and thus remained ''new chemical'' substances as defined under TSCA. In 2012, the major domestic manufacturers and importers of CPs agreed to immediately cease domestic manufacture and import of short-chain CPs. Additionally, the companies agreed to submit PMNs for the medium-and long-chain CPs for EPA to review under TSCA section 5. Around the same time, EPA added medium- and long-chain CPs to the TSCA Work Plan for existing chemical substances. However, given that these CPs were not listed on the TSCA Inventory, EPA determined it was more appropriate to manage them under the TSCA New Chemicals Program. The CPs in this SNUR were subsequently reviewed under the New Chemicals Program, and the PMN submitters were held to certain restrictions in TSCA section 5(e) Orders. Consistent with its responsibilities under TSCA section 5(f)(4), EPA is finalizing these SNURs to ensure that other manufacturers, importers and processors of these CPs are held to the same standards as the original PMN submitters. EPA notes that suppliers have been on notice of this issue for over 10 years and would have an additional 5 years to come into compliance under the terms of this SNUR.

b. Production Time Limit (Five Years) in the SNUR

Comment: Several commenters said that five years was too short a time period by which to require SNUN notification, and that the short time period reignites market uncertainty on availability of these CPs. Commenters focused on the proposed time-based SNUR triggers and the potential negative impacts on the regulated community, including downstream processors and users of substances. The commenters encouraged EPA to clarify the obligations of manufacturers and processors of these substances under the SNURs, and the timeline for those obligations. The commenters also encouraged EPA to consider whether the SNURs could be revised to mitigate uncertainty for downstream users. One commenter also asked if this time-based notification requirement applies even if the chemical is being used for the uses allowed under the SNUR.

Response: The five-year time-trigger notification requirement is consistent with the underlying TSCA section 5(e) Orders for the CPs. Processors (who are not also manufacturers/importers) are exempt from this notification requirement. A manufacturer (including importer) of the CPs subject to the SNURs has five years following their commencement of manufacture to submit a SNUN . This SNUR ensures that the PMN submitters and other entrants to the marketplace are treated uniformly. The TSCA 5(e) Orders limit the submitters to a five-year production limit. Following the effective date of the SNUR, there will be ample time for other manufacturers (those not currently subject to the TSCA section 5(e) Orders) to submit SNUNs and for the Agency to complete its review. If an entity decides to discontinue manufacture within that five-year period, there is no need for a SNUN submission requesting to go beyond that time limit. The time limit is independent of the specific use restrictions; notification is required within that five-year period even if the chemical is manufactured for an allowed end use.

Separately, in response to a comment on another batch SNUR (public docket OPPT–2017–0366), to avoid confusion EPA is modifying the proposed SNUR to eliminate specific reference to 40 CFR 721.80 requirements and instead stating the significant new use in plain English: ''It is a significant new use to manufacture (including import) the substance more than five years.''

c. Processors and Users SNUN Obligations

Comment: A commenter asked if processors or users who want to use a substance for uses other than those allowed under the SNUR must submit a SNUN for that use.

Response: Only manufacturers and processors are subject to SNUR notification requirements. A processor can either co-submit a SNUN with a manufacturer for the new use (an actual use, not the production limit, which applies only to manufacturers) or submit a SNUN on their own. After review of a SNUN, if EPA makes a finding allowing the significant new use, the submitter can engage in that new use but must wait for the SNUR to be modified accordingly before

distributing the substance for the new use.

d. Downstream Notification

Comment: A commenter asked if, pursuant to 40 CFR 721.5, notification of downstream customers and processors of the existence of the SNUR is required prior to expiration of the 5-year time production limit or only after submission of a SNUN to exceed that limit.

Response: The downstream notification requirements at 40 CFR 721.5 are in force without regard to the specific SNUR requirements once the SNUR is effective and continues until the SNUR is revoked.

e. Use Not Currently Allowed in SNUR

Comment: One commenter stated that the uses allowed under the SNUR for the CP submitted as PMN P–12–277 (40 CFR 721.11068) would hinder the ability to use the substance for a certain confidential (adhesives) use that is currently ongoing.

Response: Because this is an ongoing use, EPA has revised the regulatory text of the SNUR at 40 CFR 721.11068 to add this use to those currently allowed uses in the proposed SNUR.

f. Too Little Time To Switch to Alternatives to CPs

Comment: One commenter claims that industry may be using the CP substances subject to the SNUR for critical uses without alternatives, but with the short timeframe for comments and the lack of clarity surrounding the assignment of the CAS registry numbers, we have not been able to ascertain our uses. In the cases that alternatives may exist, transition takes beyond five years to qualify, certify, and implement. There is also the challenge of finding substances with an equivalent technical performance and proliferation within a complex supply base.

Response: The Agency notes that companies have been on notice since 2009 that EPA has been taking actions to regulate these chemical substances. As stated previously, EPA has publicly documented its concerns over these chemicals through multiple actions taken over the last decade: By initiating the enforcement action in 2009, publishing an ''Action Plan'' in 2009, reaching legal settlements with the manufacturers in 2012, initiating the TSCA section 5 process in 2012, listing the chemicals on the 2012 Work Plan, and publishing risk assessments in 2015 that identified environmental concerns. There is, therefore, no basis for EPA to further extend the five-year timeline in the proposed SNURs.

C. Isocyanates

Comment: One commenter stated that—generally for isocyanate SNURs, but in this rule specifically the proposed SNUR for PMN P–17–10 (721.11084), in which EPA proposed that exceeding the specified weight of residual isocyanates in the PMN chemical substance would be a significant new use—EPA should clarify the extent it is basing the SNUR on concerns with excess or residual isocyanate monomers. EPA appears to be basing the proposed SNURs on the potential for the hazards or risks of excess or residual isocyanate monomer in mixture with this isocyanate-based polymer or prepolymer. These isocyanate monomers are existing chemicals with many ongoing uses, including use as a monomer or use in excess or residual monomer. EPA has not transparently identified those monomers as being subject to the proposed SNURs. EPA may not use its SNUR authority to address ongoing uses of the isocyanate monomers.

In response to this commenter, another commenter stated that regardless of whether there are separate ongoing uses for these isocyanates, their presence here as residuals is directly associated with the manufacture of a new chemical substance that EPA has reviewed and for which it has determined that the PMN substance may present an unreasonable risk. That commenter continued that it is therefore appropriate in this and other such cases that EPA promulgates SNURs that would require notification and EPA review of potential risks posed by the residual isocyanates present in the PMN substance prior to allowing expanded manufacture or use. In addition, the commenter states that these isocyanates have never been used to produce the PMN substance before; this particular significant new use identified by EPA—*i.e.,* manufacture of the PMN substance with a residual isocyanate level above 0.1%—would constitute a significant new use of both the relevant isocyanates and the PMN substance requiring notification under TSCA section 5.

Response: EPA is concerned about the health effects of any residual monomer as well as unreacted isocyanate groups on a polymer when assessing the risks for the new chemical substances. EPA has the authority under TSCA section 5 to address any risks associated with the manufacture, processing, and use of the new chemical substances even if those risks are based on the presence of existing chemical substances. The SNUR only applies to activities associated with the new chemical substances. Activities associated with the new chemical substance are not ongoing activities of the existing chemical substance. EPA did not receive specific, quantitative information that demonstrates the chemical substance subject to these proposed SNURs exhibit a lower potential for the hazards and potential risks described in the proposed SNUR or that they will specifically replace a chemical substance with a higher potential for hazards and risks. EPA is issuing the SNUR as proposed to provide the Agency with the opportunity to review any new uses for potential unreasonable risks. As described in the Agency's ongoing Action Plan for MDI and TDI, diisocyanates are well-known dermal and inhalation sensitizers in the workplace and have been documented to cause asthma, lung damage, and in severe cases, fatal reactions. EPA is concerned about potential health effects that may result from exposures of consumers or self-employed workers while using products containing uncured (unreacted) MDI and TDI and its related polyisocyanates (*e.g.,* spray-applied foam sealants, adhesives, and coatings) or incidental exposures to the general population while such products are used in or around buildings including homes or schools. While workers may already be using protective controls in occupational settings, due to the nature of the potential risk posed by these chemicals, EPA believes it is prudent to emphasize its concern through respiratory protection requirements where there is potential for inhalation exposure, in addition to proposing significant new uses such as consumer use and application method. Accordingly, the regulatory actions for new diisocyanates reflects EPA's policy of consistent treatment of the entire class of potentially hazardous chemicals, regardless of their statutory status as ''new'' or ''existing'' chemicals.

Comment: One commenter stated that EPA should clarify the basis, scope, and provisions of the proposed SNURs. In particular, EPA should clarify its basis for both the imposed limitations on residual isocyanates and molecular weight limitations. In addition, the commenter added that EPA should defer personal protective equipment (PPE) and hazard communication provisions to the applicable OSHA requirements.

Response: With regards to the basis for imposed limitations on residual isocyanates and molecular weight limitations, for each PMN substance such as P–17–10 where there is potential risk from residual chemicals or lower molecular weights if the polymer is manufactured differently, EPA attempts to minimize exposure based on

information in the notification about how the chemical is manufactured. The PMN for P–17–10 contained information that the polymer was manufactured at a certain molecular weight and residual isocyanate level less than 0.1%. EPA included these as restrictions in the TSCA section 5(e) Order and the proposed SNUR to prevent potential health risks. Regarding deferring PPE and hazard communication requirements to OSHA, because the TSCA section 5(e) Orders for the chemicals in this SNUR contain worker protection requirements, EPA proposed and is issuing a final SNUR retaining those requirements so that all manufacturers and processors are subject to the same requirements. If the underlying TSCA section 5(e) Orders are modified EPA would consider modifying the SNUR. For PMNs currently in review EPA will continue to determine when PPE and hazard communication provisions can be addressed by other applicable requirements or if a specific finding for a PMN requires PPE and hazard communication provisions under TSCA.

Comment: The same commenter states that EPA should also clarify the proposed regulatory text and the preamble of the proposed SNURs, which include inconsistent language regarding when respiratory and dermal protection is needed.

Response: The regulatory text for 40 CFR 721.63 states that workers who are ''reasonably likely to be exposed'' are required to use the personal protective equipment identified in the SNUR. The preamble language is a summary of SNUR requirements and is not intended to describe every detail of the SNUR requirements. Persons manufacturing or processing a chemical substance subject to a SNUR should follow the requirements cited in the regulatory text of the SNUR.

Comment: The same commenter stated that EPA should delete the provisions incorporating the recordkeeping requirements in 40 CFR 721.125, as it did in the proposed TDI SNUR, 80 FR 2068 (Jan. 15, 2015), and some others.

Response: The SNURs cited by the commenter are existing chemical SNURs where EPA determined recordkeeping was not needed. For example, when the significant new use for an existing chemical is ''any use'' there is typically no recordkeeping required because there are no records to be maintained that would inform EPA inspection or enforcement. Because these are new chemical SNURs EPA will continue to require recordkeeping for all new chemical SNUR to better allow EPA to inspect and enforce SNUR requirements at facilities where chemicals subject to SNURs are manufactured and processed.

D. Deviation From EPA's PBT Policy

Comment: One commenter stated that EPA has deviated from its Persistent, Bioaccumulative, and Toxic (PBT) New Chemical Substances Testing Policy (see final policy statement at 64 FR 60194; November 4, 1999) and failed to explain those deviations. Comments relate to the previously mentioned CPs, plus two other chemicals (P–17–228, 40 CFR 721.11092) and P–17–229, 40 CFR 721.11093).

Response: The policy statement, which is not a rule and accordingly has no binding effect, provides guidance criteria for persistence, bioaccumulation, and toxicity for new chemicals and advises the industry about our regulatory approach for chemicals meeting the criteria. Establishment of a PBT category alerts potential PMN submitters to possible assessment or regulatory issues associated with PBT new chemicals review. It also provides a vehicle by which the Agency may gauge the flow of PBT chemical substances through the TSCA New Chemicals Program and measure the results of its risk screening and risk management activities for PBT new chemical substances; as such, it is a major element in the Agency's overall strategy to further reduce risks from PBT pollutants.

The TSCA section 5(e) Orders for the CPs do state that at least some congener groups present in the PMN substances may be ''persistent to very persistent, with estimated half-lives in air exceeding 2 days and estimated half-lives in water or sediments exceeding 2 months'' and ''bioaccumulative to very bioaccumulative based on multiple lines of evidence, including: Log Kow values, modeled BCFs, laboratory-measured BCFs, field-measured BAFs, field-measured BMFs, laboratory-measured biota-sediment bioaccumulation factors (BSAFs) and the presence of MCCPs in human and wildlife biota.'' The TSCA section 5(e) Order for the other two substances (P–17–228, 40 CFR 721.11092 and P–17–229, 40 CFR 721.11093), identifies PBT concerns as well, based on physical chemical properties of those substances. The policy statement notes that even for ''very'' P and ''very'' B cases, where ''because of the increased concern, more stringent control action would be a likely outcome, . . . it would not be appropriate to automatically trigger a ''ban pending testing'' at these cutoffs given the uncertainties about substance properties, release, and environmental behavior that normally characterize PMN review.'' Accordingly, the Agency evaluates each PMN based on the use, exposure and release information submitted, and makes a case by case risk management decision. In fact, the TSCA section 5(e) Orders for the CPs state that EPA has determined that because medium-chain CPs similar to the PMN substances have been manufactured, processed and used for the uses described in the PMN for more than 40 years, manufacture, processing, distribution in commerce, use and disposal of the PMN substances in accordance with the provisions of the TSCA section 5(e) order do not create an unreasonable risk of injury to health or the environment. The proposed SNUR terms for the CPs and the other 2 substances (P–17–228, 40 CFR 721.11092; and P–17–229, 40 CFR 721.11093) reflect the Agency's determination under their respective TSCA section 5(e) Orders, that the controls stipulated in the underlying TSCA section 5(e) Orders are protective or human health and environment, pending submission of further information that is identified in the TSCA section 5(e) Orders.

E. EPA Must Ensure That the Docket Is Complete

Comment: One commenter stated that the TSCA section 5(e) Order and Risk Assessment for the CP PMNs P–14–683 and P–14–684, plus the testing strategy for all the CP PMNs included in a previous docket, are not in the docket for this SNUR.

Response: This is an oversight. The TSCA section 5(e) Order and risk assessment for P–14–683 and P–14–684 have now been added to the docket. Note, however, that the chemical identities, risk assessment, and terms of the TSCA section 5(e) Order are identical to those for P–12–283 and P–12–282, respectively, which are already in the docket. As a result, EPA has not reopened the public comment period, because the public had an opportunity to review the available risk assessment and TSCA section 5(e) Order requirements that apply to P–16–683 and P–14–684. Each CP PMN 5(e) Order contains the current iteration of the testing strategy as specific testing requirements required by a certain date. EPA refers the public to the docket for the December 23, 2015 (80 FR 79886) ''Chlorinated Paraffins; Request for Available Information on PMN Risk Assessments'' (EPA–HQ–OPPT–2015–0789) for the original testing strategy for CPs.

F. Consistency Between Orders and SNURs: Hierarchy of Controls

Comment: One commenter stated that the provisions in many of the proposed SNURs that address ''protection in the workplace'' are not consistent with the underlying TSCA section 5(e) Orders, and unlike the TSCA section 5(e) Orders, do not accurately and sufficiently invoke the Industrial Hygiene Hierarchy of Controls (HOC), which is a foundational element of OSHA and NIOSH policy. The commenter referred to this language generally used in TSCA section 5(e) Orders: ''Engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible to each person who is reasonably likely to be [dermally exposed/exposed by inhalation] in the work area to the PMN substance . . . Where engineering, work practice, and administrative controls are not feasible or, if feasible, do not prevent exposure, each person subject to this exposure must be provided with, and is required to wear, [personal protective equipment] . . .'' The corresponding SNUR language is shortened to this: ''engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible''.

Response: Although the SNURs may not precisely mimic the language in the underlying TSCA section 5(e) Orders, the SNURs do incorporate the same requirements for HOC as found in the TSCA section 5(e) Orders. The language in the specific references under 40 CFR 721.63(a) regarding establishing a program to protect workers incorporates both the HOC and worker protection requirements of the SNUR. The requirements are identical between the TSCA section 5(e) Orders and SNURs. Adding a phrase referring to PPE where engineering controls are not feasible would not serve to further clarify this SNUR notification requirement.

G. Other Inconsistencies Between Orders and SNURs

Comment: A commenter noted the following inconsistencies between certain proposed SNUR and underlying TSCA section 5(e) Order restrictions. For P–17–218, the TSCA section 5(e) Order requires that the substance not be *manufactured or processed* ''involving a method that generates a vapor, mist, aerosol, or dust,'' whereas the proposed SNUR does not contain the same restrictions, and rather only has an analogous restriction regarding the *use* of the PMN substance. For P–17–154, the TSCA section 5(e) Order calls for chemical goggles or equivalent eye protection, while the SNUR does not. For the CP PMNs, the TSCA section 5(e) Orders state that the 5-year time limit is on manufacturing, processing, distribution in commerce, use, and disposal, while the proposed SNUR simply states it is a limit on manufacturing.

Response: For the SNUR for P–17–218, the Agency agrees that there was an oversight in the proposed rule. The final SNUR for that chemical substance no longer cites 40 CFR 721.80(y)(1) and (2), but rather include the overarching statement ''It is a significant new use to manufacture, process or use the substance involving a method that generates a vapor, mist, aerosol, or dust.'' For the SNUR for P–17–154, the Agency agrees that there was an oversight in the proposed rule. The final SNUR for that chemical substance will include the restriction found at 40 CFR 721.63(a)(2)(iii), which corresponds to chemical goggles or equivalent eye protection. For the CP PMNs, even though the 5-year time limit in the TSCA section 5(e) Order prohibited manufacture, processing, distribution in commerce, use, and disposal for the Company submitting the PMN, EPA's previous practice for all other SNURS and intent for these SNURs was not to prohibit activities other than manufacturing by other entities based on a testing requirement for manufacturers. The SNUR requirement will continue to apply only to manufacturers or importers.

H. Typographical Error in the Proposed SNUR Preamble

Comment: A commenter notes that the preamble to the proposed SNUR for P–16–543 lists one of the TSCA section 5(e) Order restrictions as ''Manufacture, process, or use of the substance without the engineering controls required by the Order to control dermal and inhalation exposure,'' where it should say ''No manufacture . . . etc.''

Response: The Agency is deferring final action on this SNUR due to ongoing review of data to support a modification to the underlying TSCA 5(e) Order that forms to basis for the SNUR.

I. Incomplete Listing of Engineering Controls

Comment: A commenter noted that the preamble to the SNUR for P–17–226 has an incomplete listing of engineering controls contained in the underlying TSCA section 5(e) Order. In particular, bullet 5 in the preamble states ''No processing without appropriate engineering controls to prevent inhalation exposure, including dust removal with 99.9% efficiency when loading or unloading the substance in powder form.''

Response: The referenced bullet 5 is the only TSCA section 5(e) Order requirement regarding engineering controls. The SNUR and preamble will remain as proposed.

J. Protection in the Workplace Provisions

Comment: A commenter suggested that EPA should add provisions addressing protection in the workplace to proposed SNURs that currently do not—and the underlying TSCA section 5(e) Orders do not—include any such provision. The commenter also states that EPA should not defer workplace protections to OSHA or NIOSH.

Response: EPA disagrees with the comment that, with respect to scenarios where EPA expects that worker protection requirements under other federal/state authorities would mitigate risks to workers, EPA must designate all uses without those protections as ''significant new uses''. As discussed in a previous response to comment, because the TSCA section 5(e) Orders for the chemicals in this SNUR contain certain requirements to address unreasonable risks, EPA proposed and is issuing a final SNUR retaining the same requirements so that all manufacturers and processors are subject to similar requirements. If the underlying TSCA section 5(e) Orders are modified to include worker protection requirements, EPA would consider modifying the SNUR. When exercising its discretion regarding which new uses should be designated as significant under TSCA section 5(a)(2), EPA expects compliance with federal and state laws, such as worker protection standards or disposal restrictions, unless case-specific facts indicate otherwise. Further, EPA expects that employers will require and workers will use the appropriate controls (*e.g.,* personal protective equipment such as impervious gloves and/or respirators), consistent with the Safety Data Sheet prepared by the PMN submitter, in a manner adequate to protect them.

K. EPA Needs To Add Limits on Water Releases in Three of the SNURs

Comment: One commenter noted that the proposed SNURs for P–17–154, P–17–155, and P–17–156 contain no limits on water releases, even though the underlying TSCA section 5(e) Order for these chemical substances mention an aquatic toxicity Concentration of Concern (CoC) of 240 ppb. By comparison, another proposed rule (P–17–226, 721.11091) does contain a surface water limit of the same amount.

Response: Based on review of the available information available for these four PMNs, the Agency made different determinations. While the hazards for the PMN substances that the commenter compared are similar, their predicted environmental fate was not. EPA estimates for removal during wastewater treatment for P–17–154, P–17–155, and P–17–156 was 90%. Wastewater treatment removal for the reaction products of P–17–226 during wastewater treatment was estimated to be as low as 0% and to contain some chemical components that are very persistent and bioaccumulative. Based on this information EPA decided to include a surface water limit for P–17–226 but not for P–17–154, P–17–155, and P–17–156.

L. Protection of Groundwater and Source Water From CFC Contamination

Comment: Two commenters—one anonymous—raised concerns related to the proposed SNUR for a substance generically described as ''chlorofluorocarbon'' (P–16–150, 40 CFR 721.11078), which includes proposed significant new uses involving workplace protection, restriction to use as a chemical intermediate and a water discharge limit. The commenters suggested that chlorofluorocarbons (CFCs) in general should not be approved under SNURs, as CFCs already contaminates certain groundwater drinking water supplies, which increases the costs and difficulty to remove this containment to provide safe drinking water, and there are potential health problems and future environmental issues.

Response: EPA's review of this chemical did identify potential for health and environmental effects if this chemical is limited to certain concentrations in surface waters or drinking water. EPA's assessment of the chemical as an intermediate only identified limited releases to air after incineration and water releases to surface waters after wastewater treatment. These releases would be significantly below any levels of concern for health and environmental effects for the chemical. Because of the potential hazards, the TSCA section 5(e) Order did not allow, and the SNUR contains reporting requirements before, levels in surface waters exceed 240 ppb or any use of the chemical other than as a chemical intermediate. EPA would receive notification of and evaluate any new uses of the chemical that could result in releases causing health and environmental effects.

M. Modification of One Order and Associated SNUR

Subsequent to the publication of the proposed SNUR for P–16–410 (721.11080), the PMN submitter requested a modification to the underlying TSCA section 5(e) Order to increase the allowable percent concentration of the PMN substance from 0.2% to 23% as an automotive engine fluid additive in imported product formulations for industrial use only. EPA evaluated the information submitted by the PMN submitter and determined that increasing the concentration of the PMN substance in imported product to 23% will not result in risk to workers or consumers. As a result, EPA modified the TSCA section 5(e) Order to allow this increase in percent concentration and has accordingly modified that provision in the associated final SNUR.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 26 chemical substances in 40 CFR part 721, subpart E. In Unit IV of the original direct final rule in the **Federal Register** of August 17, 2018 (83 FR 40986), EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of each rule specifies the activities designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

These final rules include 26 PMN substances that are subject to Orders under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). Those Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) Order usually requires, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELs provisions in TSCA section 5(e) Orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) Order for the same chemical substance.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for all 26 chemical substances regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV of the original direct final rule in the **Federal Register** of August 17, 2018 (83 FR 40986). Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA section 5(e) Orders with a SNUR that identifies the absence of those protective measures as Significant New Uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- To receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.
- To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA section 5(e) Orders, consistent with TSCA section 5(f)(4).

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) Orders have been issued for all of the chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) Orders from undertaking activities which will be designated as significant new uses. The identities of 12 of the 26 chemical substances subject to this final rule have been claimed as confidential and EPA has received one post-PMN *bona fide* submission (per 40 CFR 720.25 and 721.11) for a chemical substance covered by this action. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

EPA designated August 17, 2018 (the date of publication of the direct final and proposed rules in the **Federal Register**) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of August 17, 2018, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons will have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV of the original direct final rule in the **Federal Register** of August 17, 2018 (83 FR 40986) lists potentially useful information for all SNURs listed here. Descriptions of this information is provided for informational purposes. The potentially useful information identified in Unit IV of the original direct final rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

In certain of the TSCA section 5(e) Orders for the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or

increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same production volume limits as the TSCA section 5(e) Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the TSCA section 5(e) Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. of the original direct final rule may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2017–0414.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action establishes SNURs for several new chemical substances that were the subject of PMNs and TSCA section 5(e) Orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data

needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 3, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300G–2, 300G–3, 300G–4, 300G–5, 300G–6, 300J–1, 300J–2, 300J–3, 300J–4, 300J–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add t§§ 721.11068 through 721.11094 in numerical order under the

undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11068	2070–0012
721.11069	2070–0012
721.11070	2070–0012
721.11071	2070–0012
721.11072	2070–0012
721.11073	2070–0012
721.11074	2070–0012
721.11075	2070–0012
721.11076	2070–0012
721.11077	2070–0012
721.11078	2070–0012
721.11079	2070–0012
721.11080	2070–0012
721.11081	2070–0012
721.11083	2070–0012
721.11084	2070–0012
721.11085	2070–0012
721.11086	2070–0012
721.11087	2070–0012
721.11088	2070–0012
721.11089	2070–0012
721.11090	2070–0012
721.11091	2070–0012
721.11092	2070–0012
721.11093	2070–0012
721.11094	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11068 through 721.11094 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

* * * * *

721.11068 Alkanes, $C_{20–28}$, chloro.
721.11069 Slack waxes (petroleum), chloro.
721.11070 Hexacosane, chloro derivs. and octacosane, chloro derivs.
721.11071 Alkanes, $C_{20–24}$, chloro.
721.11072 Alkanes, $C_{14–16}$, chloro.
721.11073 Tetradecane, chloro derivs.
721.11074 Octadecane, chloro derivs.
721.11075 Alkanes, $C_{18–20}$, chloro.
721.11076 Alkanes, $C_{14–17}$, chloro.
721.11077 Alkanes, $C_{22–30}$, chloro.
721.11078 Chlorofluorocarbon (generic).
721.11079 Silane, 1,1′–(1,2-ethanediyl) bis[1,1-dichloro-1-methyl]-, hydrolysis products with chloroethenyldimethylsilane.
721.11080 Silicophosphonate—sodium silicate (generic).
721.11081 3-Butenenitrile, 2-(acetyloxy).
721.11082 [Reserved]
721.11083 Alkenoic acid, reaction products with polyethylene glycol ether with hydroxyalkyl substituted alkane (generic).
721.11084 Alkyl substituted alkenoic acid, alkyl ester, polymer with alkyl substituted alkenoate and alkenoic acid, hydroxy substituted[(oxoalkyl)oxy]alkyl ester, reaction products with alkanoic acid, dipentaerythritil and isocyanate substituted carbomonocycle, compds. with alkylamine (generic).
721.11085 Heteromonocycle ester with alkanediol (generic).
721.11086 Substituted carbomonocycle, polymer with (aminoalkyl)-alkanediamine, (haloalkyl)oxirane, dialkyl-alkanediamine and alkyl-alkanamine, reaction products with dialkanolamine and [[(alkyl)oxy]alkyl]oxirane (generic).
721.11087 Carboxylic acid amine (1:1) (generic).
721.11088 Mix fatty acids compd with amine (1:1) (generic).
721.11089 Mix fatty acids compd with amine (1:1) (generic).
721.11090 Bicyclo[2.2.1]heptane-1-methanesulfonic acid, 7,7-dimethyl-2-oxo-, compd. with N,N-diethylethanamine (1:1).
721.11091 Manganese (2+), bisoctahydro-1,4,7-trimethyl-1H–1,4,7-triazonine-.kappa.N1,.kappa.N4,.kappa.N7) tri-.mu.-oxidi-, hexafluorophosphate(1-) (1:2).
721.11092 2′-Fluoro-4″-alkyl-4-propyl-1,1′:4′1″-terphenyl (generic).
721.11093 4-ethyl-2′-fluoro-4″-alkyl-1,1′:4′, 1″-terphenyl (generic).
721.11094 Poly(oxy-1,2-ethanediyl),alpha-(2-benzoyl)-omega-[(2-benzoylbenzoyl) oxy]-.

* * * * *

§ 721.11068 Alkanes, $C_{20–28}$, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, $C_{20–28}$, chloro (PMN P–12–277, CAS No. 2097144–43–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance for other than as a flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles; and a confidential adhesives additive use. It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11069 Slack waxes (petroleum), chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as slack waxes (petroleum), chloro (PMN P–12–278, CAS No. 2097144–44–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11070 Hexacosane, chloro derivs. and octacosane, chloro derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hexacosane, chloro derivs. and octacosane, chloro derivs. (PMN P–12–280, CAS Nos. 2097144–46–0 and 2097144–47–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11071 Alkanes, $C_{20–24}$, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, $C_{20–24}$, chloro (PMN P–12–281, CAS No. 2097144–45–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11072 Alkanes, $C_{14–16}$, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, $C_{14–16}$, chloro (PMNs P–12–282 and P–14–684, CAS No. 1372804–76–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11073 Tetradecane, chloro derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as tetradecane, chloro derivs. (PMNs P–12–283 and P–14–683, CAS No. 198840–65–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11074 Octadecane, chloro derivs.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as octadecane, chloro derivs. (PMN P–12–284, CAS No. 2097144–48–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11075 Alkanes, $C_{18–20}$, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, $C_{18–20}$, chloro (PMN P–12–433, CAS No. 106262–85–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11076 Alkanes, $C_{14–17}$, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, $C_{14–17}$, chloro (PMN P–12–453, CAS No. 85535–85–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11077 Alkanes, $C_{22–30}$, chloro.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as alkanes, $C_{22–30}$, chloro (PMN P–12–505, CAS No. 288260–42–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (flame retardants and plasticizers in polyvinyl chloride, polymers, and rubber; flame retardant, plasticizer, and lubricant in adhesives, caulk, sealants, and coatings; additive in lubricants including metalworking fluids; and flame retardant and waterproofer in textiles). It is a significant new use to manufacture the chemical substance more than 5 years.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11078 Chlorofluorocarbon (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as chlorofluorocarbon (PMN P–16–150) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), and (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000), (a)(6)(liquid), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 170 ppb as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(fatal if inhaled), (g)(2)(ii), (iv), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 170 ppb), (g)(2)(v), (g)(3)(i), (ii), (g)(4)(release to water restrictions apply), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a) through (c), (g), and (q). It is a significant new use to manufacture, process, or use the PMN substance without the engineering controls described in the corresponding TSCA section 5(e) Order to prevent worker and environmental exposures. It is a significant new use to manufacture the chemical substance more than one year.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N= 240.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11079 Silane, 1,1′-(1,2-ethanediyl)bis[1,1-dichloro-1-methyl]-, hydrolysis products with chloroethenyldimethylsilane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as Silane, 1,1′-(1,2-ethanediyl)bis[1,1-dichloro-1-methyl]-, hydrolysis products with chloroethenyldimethylsilane (PMN P–16–379, CAS No. 1485477–78–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iv), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or

confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (a)(6)(v), (vi), (b)(concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1) (liver toxicity), (mutagenicity), (g)(2)(i), (ii), (iii), (v), (g)(4)(i), (do not incinerate), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), (q), (y)(1) and (2).

(iv) *Disposal.* Requirements as specified in § 721.85(a) (water), (a)(2), (b) (water), (b)(2), (c) (water), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11080 Silicophosphonate—sodium silicate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as silicophosphonate—sodium silicate (PMN P–16–410) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k). A significant new use is any use in formulations containing greater than 23% of the chemical substance.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11081 3-Butenenitrile, 2-(acetyloxy).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 3-butenenitrile, 2-(acetyloxy) (PMN P–16–438, CAS No. 15667–63–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), (a)(4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1000), (a)(6)(particulate), (a)(6)(v), (vi), (b)(concentration set at 1.0%), and (c). It is a significant new use to manufacture, process or use the substance without following the monitoring procedure as specified in the worker protection section of the corresponding TSCA section 5(e) Order.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(fatal if swallowed), (fatal if in contact with skin), (toxic if inhaled), (g)(2)(i), (ii), (iii), (iv), (v), (g)(3)(i), (ii), (g)(4)(i), (ii), (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g). It is a significant new use to manufacture or use the substance other than in an enclosed system as described in the PMN.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11082 [Reserved]

§ 721.11083 Alkenoic acid, reaction products with polyethylene glycol ether with hydroxyalkyl substituted alkane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoic acid, reaction products with polyethylene glycol ether with hydroxyalkyl substituted alkane (PMN P–16–596) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set at 0.1%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72 (a) through (e) (concentration set at 0.1%), (f), (g)(1)(i), (dermal sensitization), (g)(1)(iv), (cancer, if inhaled), (g)(1)(ix), (g)(2)(i), (ii), (iii), (v), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11084 Alkyl substituted alkenoic acid, alkyl ester, polymer with alkyl substituted alkenoate and alkenoic acid, hydroxy substituted[(oxoalkyl)oxy]alkyl ester, reaction products with alkanoic acid, dipentaerythritil and isocyanate substituted carbomonocycle, compds. with alkylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl substituted alkenoic acid, alkyl ester, polymer with alkyl substituted alkenoate and alkenoic acid, hydroxy substituted[(oxoalkyl)oxy]alkyl ester, reaction products with alkanoic acid, dipentaerythritil and isocyanate substituted carbomonocycle, compds. with alkylamine (PMN P–17–10) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (a)(6)(v), (vi), (b)(concentration set at 0.1%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 0.1%), (f), (g)(1)(i), (sensitization), (g)(1)(vii), (systemic effects), (g)(1)(ix), (g)(2)(i), (ii), (iii), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k)(ultraviolet curable coating resin), and (y)(1). It is a significant new use to manufacture the chemical substance with an average molecular weight below 2,000 daltons or containing greater than 0.1% residual isocyanate. It is a significant new use to import the substance other than in totes.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11085 Heteromonocycle ester with alkanediol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteromonocycle ester with alkanediol (PMN P–17–15) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (iv), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (g)(2)(i), (ii), (iii), (v), (g)(3)(i), (ii), (g)(4) (release to water restrictions apply), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=3.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11086 Substituted carbomonocycle, polymer with (aminoalkyl)-alkanediamine, (haloalkyl)oxirane, dialkyl-alkanediamine and alkyl-alkanamine, reaction products with dialkanolamine and [[(alkyl)oxy]alkyl]oxirane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted carbomonocycle, polymer with (aminoalkyl)-alkanediamine, (haloalkyl)oxirane, dialkyl-alkanediamine and alkyl-alkanamine, reaction products with dialkanolamine and [[(alkyl)oxy]alkyl]oxirane (PMN P–17–29) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(i), (eye irritation), (g)(1)(ii), (g)(2)(i), (ii), (iii), (v), (g)(3)(i), (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), (q), and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11087 Carboxylic acid amine (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carboxylic acid amine (1:1) (PMN P–17–154) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iv), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (a)(6)(v), (vi), (b)(concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(i), (ii), (iii), (thyroid effects), (g)(1)(vi), (ix), (g)(2)(i), (ii), (iii), (v), (g)(3)(i), (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11088 Mix fatty acids compd with amine (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as mix fatty acids compd with amine (1:1) (PMN P–17–155) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iv), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (a)(6)(v), (vi), (b)(concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(i), (ii), (iii), (thyroid effects), (g)(1)(vi), (ix), (g)(2)(i), (ii), (iii), (v), (g)(3)(i), (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11089 Mix fatty acids compd with amine (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as mix fatty acids compd with amine (1:1) (PMN P–17–156) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (iv), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (a)(6)(v), (vi), (b)(concentration set a 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(i), (ii), (iii), (thyroid effects), (g)(1)(vi), (ix), (g)(2)(i), (ii), (iii), (v), (g)(3)(i), (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11090 Bicyclo[2.2.1]heptane-1-methanesulfonic acid, 7,7-dimethyl-2-oxo-, compd. with N,N-diethylethanamine (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as bicyclo[2.2.1]heptane-1-methanesulfonic acid, 7,7-dimethyl-2-oxo-, compd. with N,N-diethylethanamine (1:1) (PMN P–17–218. CAS No. 67019–84–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (a)(6)(v), (vi), (b)(concentration set 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(i), (corrosivity), (sensitization), (g)(1)(iii), (iv), (ix), (g)(2)(i), (ii), (iii), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q), (y)(1) and (2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11091 Manganese (2+), bisoctahydro-1,4,7-trimethyl-1H–1,4,7-triazonine-.kappa.N1,.kappa.N4,.kappa.N7) tri-.mu.-oxidi-, hexafluorophosphate(1-) (1:2).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as manganese (2+), bisoctahydro-1,4,7-trimethyl-1H–1,4,7-triazonine-.kappa.N1,.kappa.N4,.kappa.N7) tri-.mu.-oxidi-, hexafluorophosphate(1-) (1:2) (1:1) (PMN P–17–226, CAS No. 116633–52–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6)(particulate), (b) (concentration set at 0.1%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 0.1%), (f), (g)(1)(eye irritation), (respiratory sensitization), (g)(1)(iii), (iv), (vi), (vii), (viii), (g)(2)(i), (ii), (iii), (v), (g)(3)(i), (ii), (g)(4)(release to water provisions apply), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k). It is a significant new use to process or use the substance without engineering controls to prevent exposure, including dust removal with 99.9% efficiency when loading or unloading the substance in powder form.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=240.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11092 2′-Fluoro-4″-alkyl-4-propyl-1,1′:4′1″-terphenyl (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2′-fluoro-4″-alkyl-4-propyl-1,1′:4′1″-terphenyl (PMN P–17–228) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set at 1.0%), (f), (g)(1)(vi), (adrenal effects), (liver effects), (g)(2)(i), (ii), (iii), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(t) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11093 4-ethyl-2′-fluoro-4″-alkyl-1,1′4′,1″-terphenyl (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 4-ethyl-2′-fluoro-4″-alkyl-1,1′:4″,1′-terphenyl (PMN P–17–229) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in

§ 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e)(concentration set 1.0%), (f), (g)(1)(vi), (adrenal effects), (liver effects), (g)(2)(i), (ii), (iii), (v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(t) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11094 Poly(oxy-1,2-ethanediyl),alpha-(2-benzoyl)-omega-[(2-benzoylbenzoyl)oxy]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl),alpha-(2-benzoyl)-omega-[(2-benzoylbenzoyl)oxy]- (PMN P–17–261; CAS No. 1246194–73–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b)(concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(irritation), (photosensitization), (g)(2)(i), (ii), (iii), (v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

[FR Doc. 2019–19667 Filed 9–17–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0706; FRL–9998–72–Region 6]

Air Plan Approval; New Mexico; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards and Repeal of State Regulations for Total Suspended Particulate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) infrastructure certifications from the State of New Mexico and Albuquerque-Bernalillo County to address CAA section 110(a)(1) and (2) requirements for the 2015 ozone (O_3) National Ambient Air Quality Standards (NAAQS). The submittals address how the existing SIP provides for the implementation, maintenance, and enforcement of the 2015 O_3 NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the New Mexico SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS. The EPA is also approving a SIP revision for the repeal of the New Mexico Ambient Air Quality Standards (NMAAQS) for total suspended particulate (TSP) in the New Mexico regulations incorporated into the SIP.

DATES: This rule is effective on October 18, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2018–0706. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Ms. Karolina Ruan Lei, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665–7346, *ruan-lei.karolina@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Karolina Ruan Lei or Mr. Bill Deese at (214) 665–7253.

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

I. Background

The background for this action is discussed in detail in our proposal published on April 18, 2019 (84 FR 16226). In that notice we proposed to approve the November 1, 2018, and September 24, 2018, i-SIP certifications submitted by the State of New Mexico and Albuquerque-Bernalillo County, respectively. The November 1, 2018, and September 24, 2018, submittals addressed the implementation, maintenance, and enforcement of the 2015 O_3 NAAQS in New Mexico, including two of the four interstate transport requirements (CAA section 110(a)(2)(D)(i)(II)). We also proposed to approve a SIP revision submitted on November 16, 2018, by the State of New Mexico that pertains to the repeal of the air quality standards for TSP in New Mexico. The November 16, 2018, submital included a demonstration that the repeal of the TSP NMAAQS will not interfere with the attainment and maintenance of the NAAQS or any other CAA requirement.

We received comments on the April 18, 2019, proposal from two commenters on the infrastructure portion of the action. One commenter

was anonymous and submitted adverse comments on several elements of the New Mexico i-SIPs. The other commenter was the City of Albuquerque Environmental Health Department (EHD), who submitted a comment letter to correct certain statements made in the proposal. We did not receive any comments regarding the repeal of the TSP NMAAQS. Our response to the comments is provided in the section below.

II. Response to Comments

Comment: The commenter stated that the EPA should disapprove the current infrastructure SIP as it relates to prevention of significant deterioration (PSD) elements. The current approved version of the New Mexico regulation does not require ammonia as a precursor to fine particulate matter ($PM_{2.5}$) evaluations. The commenter stated that the EPA claims the State and County have a ''comprehensive'' program, but the approved regulation does not include ammonia as a precursor. The commenter stated that New Mexico must update its permitting programs for both the State and the counties.

Response: The EPA disagrees with the comment. The EPA's minimum requirements for a state PSD program at 40 CFR 51.166 do not regulate ammonia as either a precursor or a presumed precursor for $PM_{2.5}$ for PSD permitting. Regulated precursors for $PM_{2.5}$ for PSD permitting are defined at 40 CFR 51.166(b)(49)(i)(*b*)(*2*) and (*3*) as sulfur dioxide and nitrogen oxides, respectively.[1] The State of New Mexico and Albuquerque-Bernalillo County PSD programs were SIP-approved for the regulation of $PM_{2.5}$ and its precursors on January 22, 2013, and September 19, 2012, respectively (78 FR 4339 and 77 FR 58032). The New Mexico State and County SIP-approved PSD programs are comprehensive PSD programs that cover all regulated pollutants, including $PM_{2.5}$ and its applicable precursors.

Comment: The commenter stated that New Mexico's permitting program requires ambient air quality modeling to be performed ''as specified in EPA's Guideline on Air Quality Models (EPA–450/2–78–027R, July 1986), its revisions, or any superseding document, and approved by the Department.'' The commenter stated that this text in the regulation restricts the State from requiring the most up-to-date modeling as required in 40 CFR part 52, Appendix W, which is not a ''superseding document'', as it is a regulation promulgated by the EPA and not a document.

The commenter also stated that the State's rule appears to give the State inappropriate director's discretion in the use of what air quality modeling is used as the language ''and approved by the department'' appears to allow the department to disregard EPA-required modeling if the department does not approve of it. The commenter stated that director's discretion was outlawed by the Courts in *NRDC* v. *EPA* in 2013 and was affirmed by the EPA in its startup, shutdown, and malfunction SIP call. The commenter additionally stated that this modeling problem should also require the EPA to disapprove Element K as well, since that also has to do with modeling.

Response: The EPA disagrees with the commenter that the text in the New Mexico regulation, which the commenter cited from 20.2.74.305 of the New Mexico Administrative Code (NMAC), restricts the State from requiring the most up-to-date modeling. The EPA notes that the commenter likely meant to refer to 40 CFR part 51 rather than 40 CFR part 52 as there is no Appendix W in 40 CFR part 52, and the EPA's *Guideline on Air Quality Models* is codified at 40 CFR part 51, Appendix W.

The general definition of the term ''document'' can mean any written, printed, or electronic material that provides information or conveys thoughts or ideas. Any regulation in the CFR is considered a document. The EPA's *Guideline on Air Quality Models* (40 CFR part 51, Appendix W) also refers to itself as a document at several instances throughout its text. The most recent version of the *Guideline on Air Quality Models* is therefore a ''superseding document'' to the July 1986 *Guideline on Air Quality Models* cited in the New Mexico regulations at 20.2.74.305 NMAC.

Additionally, the text in the New Mexico regulations at 20.2.74.305 NMAC also includes any ''revisions'' to the EPA's *Guideline on Air Quality Models.* The January 17, 2017, final rule for the most recent update to Appendix W is titled ''Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter'' and contains a description of the action in the summary, which states that ''[i]n this action, the Environmental Protection Agency (EPA) promulgates revisions to the *Guideline on Air Quality Models*'' (82 FR 5182). The January 17, 2017, final rule also describes in the background section the past revisions of the *Guideline on Air Quality Models* (*Id.*). Therefore, the most recent version of the *Guideline on Air Quality Models* is clearly a ''revision'' to older versions, including the July 1986 version cited in the New Mexico regulation, of the EPA's *Guideline on Air Quality Models.*

The EPA also disagrees with the commenter that the provisions at 20.2.74.305 NMAC provide inappropriate director's discretion to the State of New Mexico. This provision clearly requires that modeling be conducted pursuant to the latest version of the EPA's *Guideline on Air Quality Models.* According to 20.2.74.305 NMAC, ''[a]ny substitution or modification of a model must be approved by the Department'', and ''[n]otification shall be given by the Department of such a substitution or modification and the opportunity for public comment provided for in fulfilling the public notice requirements in subsection B of 20.2.74.400 NMAC''. Additionally, 20.2.74.305 NMAC states that the New Mexico Environment Department (NMED) ''will seek EPA approval of such substitutions or modifications''. The provisions at 20.2.74.305 NMAC, the EPA's regulations at 40 CFR 51.166(l) and the *Guideline on Air Quality Models* itself provide that alternative models, modeling scenarios, or model substitutions may be used if approved by the EPA. The New Mexico rule requires an additional approval from the state air director in addition to the EPA before an applicant can use such an alternative model or model substitution for permitting.

The New Mexico regulations at 20.2.74.305 NMAC, therefore, do not restrict the State from requiring the most recent modeling for permitting as required by 40 CFR 51.166(l) nor do they provide inappropriate director's discretion to the State of New Mexico.

Comment: The commenter asked, with respect to adequate funding, whether the EPA has done a full accounting of the department's finances. The commenter also asked how the EPA can be sure that New Mexico is collecting the correct amount in fees from major title V sources to adequately fund the department and stated that there is no accounting or financial evaluation in the docket that proves

[1] It should also be noted that 40 CFR 51.166(b)(49)(i)(*b*)(*3*) provides that a state may overcome the presumption that nitrogen oxides (NO_X) is a regulated precursor if it demonstrates NO_X emissions from sources in a particular area do not significantly contribute to that area's ambient $PM_{2.5}$ concentrations. The PSD requirements also include a presumption that volatile organic compounds are not precursors to $PM_{2.5}$ in any attainment or unclassifiable area unless found to be a significant contributor to that area's ambient $PM_{2.5}$ concentrations. *See* 40 CFR 51.166(b)(49)(i)(*b*)(*4*).

New Mexico or the County is adequately funded. The commenter also asked if they are supposed to take the State's word at face value.

Response: A ''full accounting of the NMED's finances'' is not required. Section 110(a)(2) does not require a specific quantitative metric or methodology for determining adequate resources. Section 110(a)(2)(E) requires that the state provide necessary assurances that the state will have adequate funding under state law to carry out the SIP. As mentioned in our TSD for the proposal, to address adequate funding, the NMED and the EHD have the resources necessary to carry out the SIP, which are provided through general funds, permit fees, and the CAA section 103 and 105 grant processes. NMSA 1978, § 74–2–5.1(F) provides the NMED and the EHD with the power to accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, or from any person. NMSA 1978, § 74–2–7 authorizes and requires the State and County to adopt regulations to include for the collection of permit fees.

The State of New Mexico's Permit Fee System implements a fee system for all preconstruction air permits issued by the NMED and can be found at 20.2.75 NMAC, *Construction Permit Fees.* The provisions in 20.2.75 NMAC were most recently approved by the EPA on March 29, 2012 (77 FR 18923). In the March 29, 2012, final rule, the EPA found that the rule and revisions to 20.2.75 NMAC met the applicable fee-related requirements in section 110(a)(2) of the CAA (77 FR 18923). Under the provisions of 20.2.75 NMAC, the NMED assesses fees when an owner or operator applies for a notice of intent, a permit to construct or modify a source, or a revision to a construction permit. Additionally, annual fees are assessed for sources that have been issued a permit under 20.2.72 NMAC, *Construction Permits.*

Albuquerque-Bernalillo County's provisions for permit fees are codified in 20.11.2 NMAC, *Fees,* and 20.11.41, *Construction Permits,* which were most recently approved by the EPA on May 24, 2012, and June 29, 2017, respectively (77 FR 30900 and 82 FR 29421). The EPA found that the submitted rules and revisions to 20.11.2 NMAC met the applicable fee-related requirements of section 110(a)(2) of the CAA (76 FR 68385, November 4, 2011; 77 FR 30900, May 24, 2012). Under the provisions of 20.11.2 NMAC, the EHD assesses fees when an owner or operator applies for an air permit, air permit renewal, or air permit amendment. Annual fees are also assessed for sources with existing source registrations or permits.

The State of New Mexico and Albuquerque-Bernalillo County each concluded in their i-SIP submittals that they do not anticipate a need for additional resources to implement their respective plans for the 2015 O_3 NAAQS beyond those which have been utilized for the preparation of said plans, plan revisions submitted to the EPA, and other current programmatic demands.

Additionally, section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority to cover the cost of reviewing, approving, implementing and enforcing a permit. Section 110(a)(2) falls under title I of the CAA and governs the implementation, maintenance, and enforcement of the NAAQS, in this instance 2015 O_3, through the federally approved SIP. Section 110 and 40 CFR part 51 also provide mechanisms for programmatic remedies with respect to the SIP. Furthermore, title I addresses minor and major new source review SIP preconstruction permits. The title V program, by contrast, governs operating permits and is addressed by CAA sections 502 through 507. Any evaluation of the title V program and any consequent programmatic remedies must be done pursuant to CAA section 502 and 40 CFR part 70. The scope of this action is limited to determining whether the New Mexico SIP meets certain infrastructure requirements of CAA 110(a)(2) with respect to the 2015 O_3 NAAQS. The State of New Mexico and Albuquerque-Bernalillo County's title V programs are not part of the New Mexico SIP but were approved by the EPA on November 26, 1996 (61 FR 60032). Title V fees are separate from title I fees. As mentioned earlier in this action, title V is subject to evaluation under different statutory and regulatory mechanisms provided for outside the SIP parameters for evaluation under CAA section 110 and 40 CFR part 51. Therefore, the part of the comment that questions whether New Mexico collected the correct amount in fees from major title V sources (Element L) to adequately fund the department is irrelevant to the approval of Element E.

As described in our proposal, TSD, and previously in this response, the EPA's evaluation and approval of adequate resources for the State of New Mexico and Albuquerque-Bernalillo County are based upon various sources of funding, state statutes and rules pursuant to section 110(a)(2). The EPA has not identified sufficient information to support the necessary finding for disapproval with regard to adequate funding. Also, the commenter has not identified any flaws or specific program deficiencies in the State's or County's accounting or fee system, or description of why we would question such. The EPA noted no significant deficiencies, thus indicating that both the State of New Mexico and Albuquerque-Bernalillo County have sufficient resources to implement their respective SIPs. Therefore, the EPA is approving Element E for the State of New Mexico and Albuquerque-Bernalillo County for meeting infrastructure requirements for the 2015 O_3 NAAQS.

Comment: The commenter stated that in Table 1 of the proposed action, the EPA notes that Element J as it pertains to visibility is ''not germane to infrastructure SIPs''. The commenter stated that this statement is incorrect as Element J is a necessary element that needs to be addressed in each and every SIP.

Response: The EPA disagrees with the commenter that the visibility sub-element of Element J needs to be addressed in these infrastructure SIPs from the State of New Mexico and Albuquerque-Bernalillo County for the 2015 O_3 NAAQS. Under 40 CFR part 51 subpart P, implementing the visibility requirements of CAA title I, part C, states are subject to requirements for reasonably attributable visibility impairment, new source review for possible impacts on air quality related values in Class I areas, and regional haze planning. These include timeframes for SIP submittals related to visibility requirements. *See, e.g.,* 40 CFR 51.308(b) (establishing a deadline for initial SIPs to meet regional haze requirements of December 17, 2007). As the EPA recognized in the 2013 Infrastructure SIP Guidance, generally speaking, when the EPA establishes or revises a NAAQS, the visibility requirements under part C of title I of the Clean Air Act do not change. *See* Guidance at pages 54–55.[2] There are no new visibility protection requirements under part C as a result of the revised NAAQS here. Therefore, there are no newly applicable visibility protection obligations pursuant to Element J applicable in or to New Mexico, and this sub-element is therefore not being addressed in this action. We note that the State of New Mexico and Albuquerque-Bernalillo County each currently have a fully approved SIP under subpart P, addressing best

[2] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)''. Memorandum from Stephen D. Page, U.S. EPA, Office of Air Quality Planning and Standards. September 13, 2013.

available retrofit technology (BART) and reasonable progress requirements as part of their long-term strategy for improving visibility during the first planning period. For the State of New Mexico, see 77 FR 70693 (November 27, 2012) and 79 FR 60985 (October 9, 2014) for the final approval of the State's regional haze SIP, and see 82 FR 27127 (June 14, 2017) for the final approval of the State's five-year progress report. For Albuquerque-Bernalillo County, see 77 FR 71119 (November 29, 2012) for the final approval of the County's regional haze SIP, and see 82 FR 58347 (December 12, 2017) for the final approval of the County's five-year progress report. New Mexico and other states are in the process of developing SIPs for the second planning period, which are due to the EPA on July 31, 2021. *See* Final Rule, Protection of Visibility: Amendments to Requirements for State Plans, 82 FR 3078 (January 10, 2017).

Comment: The commenter stated that the EPA should also issue a federal plan for the interstate transport elements, as these elements were due in October 2018, and it is now (at the time the comment was submitted) seven months late, and both the EPA and New Mexico have stated that the State does not have an interstate transport submission (section 110(a)(2)(D)(i)(I)) prepared by stating ''as a sufficient basis for a submittal addressing these requirements does not yet exist''. The commenter stated that since the EPA is formally recognizing in the proposed notice that the State has not made a submission for the interstate transport elements, this should be considered a finding of failure to submit, and finalization of this regulation should start a 24-month clock for the EPA to issue a federal implementation plan.

Response: In this action, the EPA is only evaluating whether the SIP submissions under review have met the statutory requirements they purport to address. Whether or not the State of New Mexico or Albuquerque-Bernalillo County have otherwise made a timely submission addressing the interstate transport elements (section 110(a)(2)(D)(i)(I)) for the 2015 O_3 NAAQS infrastructure requirements is outside the scope of this rulemaking because the EPA is not addressing these elements in this action. The EPA interprets its authority under CAA section 110(k) as affording the Agency the discretion to approve, disapprove, or conditionally approve, individual elements of the New Mexico infrastructure and transport SIP submissions for the 2015 O_3 NAAQS. The EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from other infrastructure SIP elements and interprets section 110(k) as allowing it to act on individual severable elements or requirements in a SIP submission. In short, the EPA has the discretion under CAA section 110(k) to act upon the various individual elements of a state's infrastructure SIP submission, separately or together, as appropriate. Here, the EPA has focused its evaluation on the individual infrastructure SIP elements addressed in the SIP submissions under review. The EPA will evaluate whether it is necessary to issue a separate notice to formally address the requirements of section 110(a)(2)(D)(i)(I) in the future.

Comment: We received one comment from the City of Albuquerque Environmental Health Department (EHD) stating that the EPA incorrectly made two statements which misstate New Mexico law in the April 18, 2019, proposal. The EHD provided proposed corrections to the two statements and clarified the EHD's authority under New Mexico law as well as the EHD's relation to the New Mexico Environmental Improvement Board (EIB) and the Albuquerque and Bernalillo County Joint Air Quality Control Board (Air Board).

The EHD stated that the first incorrect statement is: ''The AQCA [New Mexico Air Quality Control Act] and Ordinances [Albuquerque and Bernalillo County Joint Air Quality Control Board Ordinances] also state that the EHD is the administrative agency for the EIB and give the EHD authority to enforce air quality regulations.'' The EHD stated that the statement would be correct if changed to: ''The AQCA and Ordinances also state that the EHD is the administrative agency for the *Air Board* and give the EHD authority to enforce the *Air Board's* air quality regulations.''

The EHD stated that the second incorrect statement is: ''[T]he AQCA provides authority for the NMED and the EHD to enforce the requirements of the AQCA and any regulations of the EIB, permits, or final compliance orders.'' The EHD stated that the statement would be correct if changed to: ''[T]he AQCA provides authority for the NMED and the EHD to enforce the requirements of the AQCA and, *within their respective jurisdiction,* any *applicable* regulations, or permits, or final compliance orders *each agency (NMED and EHD) has issued.*''

Response: The EPA agrees with the EHD's corrected statements of its authority under New Mexico law.

III. Final Action

We are approving the November 1, 2018, and September 24, 2018, i-SIP submittals pertaining to the implementation, maintenance, and enforcement of the 2015 O_3 NAAQS, including two of the transport sub-elements (CAA section 110(a)(2)(D)(i)(II)), in the State of New Mexico and Albuquerque-Bernalillo County. Table 1 below outlines the final action EPA is taking on specific infrastructure elements.

TABLE 1—FINAL ACTION ON NEW MEXICO INFRASTRUCTURE SIP SUBMITTALS FOR THE 2015 O_3 NAAQS

Element	2015 O_3
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data systems	A
(C)(i): Enforcement of SIP measures	A
(C)(ii):PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Prohibit emissions to other states which will (1) significantly contribute to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS.	NA
(D)(i)(II): Prohibit emissions to other states which will (3) interfere with PSD requirements or (4) interfere with visibility protection	A
(D)(ii): Interstate and international pollution abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A

TABLE 1—FINAL ACTION ON NEW MEXICO INFRASTRUCTURE SIP SUBMITTALS FOR THE 2015 O_3 NAAQS—Continued

Element	2015 O_3
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table: A—Approved; +—Not germane to infrastructure SIPs; NA—No action.

We are also approving the November 16, 2018, submittal which consists of a revision to 20.2.3 NMAC (Ambient Air Quality Standards) . The approved SIP revision removes section 109 (Total Suspended Particulates) from 20.2.3 NMAC, as the EPA found that such a revision will not adversely affect the attainment of applicable CAA requirements.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of a revision to 20.2.3 NMAC. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information)''. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

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

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

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

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 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, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 28, 2019.

Kenley McQueen,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. Section 52.1620 is amended:

■ a. In paragraph (c), under the first table titled ''EPA Approved New Mexico Regulations,'' by revising the entry for Part 3;

■ b. In paragraph (e), under the second table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP,'' by adding an entry at the end for ''Infrastructure for the 2015 Ozone NAAQS''.

The revision and addition read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
*	*	*	*	*
Part 3	Ambient Air Quality Standards	11/16/2018	9/18/2019, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
Infrastructure for the 2015 Ozone NAAQS.	Statewide	9/24/2018, 11/1/2018	9/18/2019, [Insert **Federal Register** citation].	SIPs adopted by NMED and City of Albuquerque. Does not address CAA section 110(a)(2)(D)(i)(I).

[FR Doc. 2019–19500 Filed 9–17–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0036; FRL–9999–67–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland for the 2015 ozone national ambient air quality standard (NAAQS or standard). Whenever EPA promulgates a new or revised NAAQS, states are required to make a SIP submission showing how the existing approved SIP has all the provisions necessary to meet certain SIP requirements for the new or revised NAAQS, or to add any needed provisions necessary to meet these requirements. The SIP revision is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Maryland has made a submittal addressing the infrastructure requirements for the 2015 ozone NAAQS. EPA is approving Maryland's SIP revision addressing the infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of section 110(a) of the Clean Air Act (CAA).

DATES: This final rule is effective on October 18, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0036. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215)

814–5787. Ms. Schmitt can also be reached via electronic mail at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2015, EPA issued a final rule revising both the primary and secondary NAAQS for ozone to 0.070 parts per million (ppm) based on 8-hour average concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to make SIP submissions to meet the applicable requirements of section 110(a)(2) within three years after EPA promulgates a new or revised NAAQS, or within a shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure implementation, maintenance, and enforcement of the new or revised NAAQS. EPA refers to this type of SIP submission as an ''infrastructure SIP submission'' because it focuses on the basic requirements that a state must have to provide for implementation, maintenance, and enforcement of the NAAQS at issue in the submission.

II. Summary of SIP Revision and EPA Analysis

On October 11, 2018, EPA received from the State of Maryland, through the Maryland Department of the Environment (MDE), a formal SIP submission (#18–06) to satisfy the requirements of section 110(a) of the CAA for the 2015 ozone NAAQS. EPA reviewed Maryland's submittal and, subsequently on April 24, 2019, published a notice of proposed rulemaking (NPRM) regarding this submittal. See 84 FR 17125. The SIP submission addressed the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIP submissions in general, is explained in the published NPRM and the technical support document (TSD) and will not be restated here. The NPRM and TSD are available in the docket for this rulemaking at *https://www.regulations.gov,* Docket ID Number EPA–R03–OAR–2019–0036.

III. Public Comment and EPA's Response

EPA received comments from one commenter in response to the April 24, 2019 proposed approval of Maryland's 2015 ozone NAAQS infrastructure SIP. The commenter did not provide any personal information, such as a name or group affiliation, and therefore is considered anonymous. The commenter opposed EPA's proposed approval of the SIP submission on several grounds. The full text of the comment is in the docket for this rulemaking action.

Comment 1: The commenter claims that EPA was incorrect in proposing to find that Maryland's 2015 ozone NAAQS infrastructure SIP submittal met the requirements of section 110(a)(2)(A) of the CAA, because Maryland is not attaining the 2015 ozone NAAQS of 70 parts per billion (ppb).[1] The commenter cites and includes data from MDE's website showing 16 days when monitor data showed exceedances of the NAAQS in 2018, and notes that the number of exceedances increased from 11 in 2014.

EPA Response: EPA disagrees with the commenter regarding the approvability of Maryland's infrastructure SIP submittal with respect to the requirements of CAA section 110(a)(2)(A) for the 2015 ozone NAAQS. First, in this action, EPA is evaluating the State's infrastructure SIP submission. In this context, EPA is not determining whether or not Maryland has met all of the potential emissions control requirements that may or may not ultimately be necessary in order to comply with CAA section 110(a)(2)(I), and part D, subpart 2 SIP requirements for nonattainment areas. In the context of evaluating an infrastructure SIP submission, EPA interprets section 110(a)(2)(A) of the CAA at this early stage of planning for a new or revised NAAQS only to require a state to identify the existing control measures already in the existing SIP that provide for implementation, maintenance, and enforcement of the 2015 ozone NAAQS. Section 110(a)(2) requires that each SIP ''include enforceable emission limitations and other control measures, means, or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the CAA],'' which in this case is the 2015 ozone standard. In later phases of SIP planning, in particular to meet requirements for nonattainment plan SIP submissions in designated nonattainment areas, states are required to adopt additional measures to provide for attainment of the NAAQS, as applicable. EPA has provided guidance explaining that nonattainment plan SIP submission requirements are separate from infrastructure SIP submission requirements.[2]

Second, to the extent that Maryland needs to adopt and submit any additional emission controls in nonattainment areas in order to attain the 2015 ozone NAAQS, the State will need to do so in a different type of SIP submission that it must submit later. EPA reviews an infrastructure SIP submittal to verify that the state's SIP provides for the implementation, maintenance, and enforcement of the NAAQS and that any additional requirements for a new NAAQS is met, but not to evaluate whether the state has met any potential nonattainment area plan requirements that apply separately and later. Under subpart 2 of part D of title I of the CAA, state planning and emissions control requirements in a nonattainment area for ozone are determined, in part, by the area's classification. Under subpart 2, EPA initially classified ozone nonattainment areas based on the severity of their ozone levels, as determined by the area's design value relative to the lower and upper design value thresholds for each classification. Nonattainment areas with a lower classification, such as ''marginal,'' have ozone levels at the time of designation that are closer to the standard than areas with a higher classification. Ozone nonattainment areas in the lower classification levels have fewer initial mandatory air quality planning and control requirements than those in higher classifications. EPA designated several areas within Maryland as marginal nonattainment areas for the 2015 ozone NAAQS. 83 FR 25776, 25812 (June 4, 2018); 40 CFR 81.321. Section 182 of the CAA requires states with ozone nonattainment areas to submit various SIP elements within specified time frames. States with areas designated as marginal nonattainment have two years from the effective date of designation to submit SIP revisions addressing emissions inventories (required by CAA section 182(a)(1)), reasonably available control technology (CAA section 182(b)(2)) and certain emissions statement regulations.[3] Maryland's effective date for the initial nonattainment designation for the 2015 ozone NAAQS was August 3, 2018, so

[1] 70 ppb converts to 0.070 ppm.

[2] See, Memorandum dated September 13, 2013, entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions 1—10. A copy of this guidance is in the docket for this action.

[3] Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements. 83 FR 62998 (December 6, 2018).

the nonattainment SIP elements for Maryland for the 2015 ozone NAAQS are not due until August 3, 2020. CAA section 181 provides an increasing amount of maximum time from the date of designation to attain the standards for the progressively higher classifications: Marginal—3 years, moderate—6 years, serious—9 years, severe—15 or 17 years, and extreme—20 years. Under EPA's interpretation of section 181 of the CAA, marginal nonattainment areas have up to three years after the effective date of the nonattainment designation to attain the 2015 ozone NAAQS. 40 CFR 51.1302. Thus, Maryland's marginal nonattainment areas for the 2015 ozone NAAQS have until June 4, 2021 to come into attainment. EPA's review of Maryland's infrastructure SIP submittal indicated that the State has numerous SIP approved regulations in place to control and reduce emissions of the ozone precursors nitrogen oxides (NO_X) and volatile organic compounds (VOCs).

Third, regarding the ambient ozone measurements referenced by the commenter, EPA agrees that some of these preliminary 8-hour concentrations exceed the 0.070 ppm numerical level of the 2015 ozone NAAQS. However, an individual 8-hour average measurement at an individual monitor is not indicative of whether the 2015 ozone NAAQS has been violated in an area. The standard is met at an air quality monitor when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to the 2015 ozone NAAQS (0.070 ppm). 40 CFR 50.19(b). Thus, three full years of data for each monitor is required, and more specifically, it is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration that is needed to ascertain if a monitor is attaining or not. None of the numerical values cited by the commenter, by themselves, can be used to determine if the monitor or area is violating the NAAQS. The commenter referred several times to preliminary daily ozone values and seemed to infer that these daily values could be compared to the 2015 ozone standard. This is misleading as the 2015 ozone standard is not measured by a singular day's reading. Therefore, the daily monitor readings are not comparable. Finally, EPA disagrees with the commenter that the Agency stated in the proposed approval notice that Maryland is currently attaining the 2015 ozone NAAQS. However, as mentioned previously, the State has until 2021 to attain.

Comment 2: The commenter questioned EPA's proposed finding that Maryland has the necessary funding and personnel to implement the SIP, as required by CAA section 110(a)(2)(E)(i), and EPA's proposed finding that the SIP required major stationary sources to pay adequate permit fees to cover the cost of reviewing and acting upon a permit application, and that it was adequate to cover the cost of ensuring the permits are followed, as required by CAA section 110(a)(2)(L). The commenter questioned whether EPA has a formula for making these determinations, or hired a qualified forensic accountant to comb through MDE's finances to determine the financial stability of MDE. The commenter questions EPA's methods for evaluating the adequacy of Maryland's staffing and budget levels.

EPA Response: As stated in the proposed approval for this action, EPA's evaluation indicates that the State of Maryland has the staffing and funding resources to meet SIP obligations in accordance with section 110(a)(2)(E) of the CAA. Maryland's infrastructure SIP submission for the 2015 ozone NAAQS (SIP submittal) indicated that MDE's Air and Radiation Division has a budget of $19.5 million for fiscal year 2019, which is on par with its budgets in 2017 and 2018, and currently has 167 personnel in the Air and Radiation Division. SIP submittal, pp. 7–8. These budget and staff levels have been consistent over the past number of years and over these years Maryland has been able to meet its statutory commitments, including submitting the required air quality data, attainment plans, and monitoring network plans.

In addition, the SIP submittal cited the state law allowing MDE to seek funding, as well as the various funding sources for its programs, including CAA section 103 and 105 grants, the Maryland Clean Air Fund, permit fees, fees from vehicle emission inspections, and funds received from the Maryland Department of Transportation to help fund transportation-related air pollution programs. SIP submittal, pp. 7–8. Maryland also has an EPA-approved fee program under CAA title V which is used to support title V program elements such as permitting, monitoring, testing, inspections, and enforcement. EPA conducts periodic title V fee and program audits in accordance with generally accepted government auditing standards. Maryland regulation COMAR 26.11.02.19 provides fee schedules and other relevant fee information regarding title V permits and state permits to operate. Regarding Maryland's CAA section 105 funding, Maryland's use of the funds is evaluated through the evaluation process requirements of 40 CFR part 35, subpart A, which call for the State and EPA to jointly evaluate and report progress and accomplishments under the work plan.[4] Maryland also has various permit programs that are self-funded as they apply fees for permit applications. Most of these permit program fees can be adjusted if the State determines that the fee does not cover the reasonable costs of reviewing and acting upon the permit applications. Based on EPA's various reviews of these existing resources, EPA reasonably concluded that Maryland has adequate funding and personnel to implement its SIP.

Comment 3: The commenter asserts that EPA cannot find this infrastructure SIP meets CAA section 110(a)(2)(B) because EPA had to issue a Data Requirements Rule (DRR) for sulfur dioxide (SO_2) because Maryland did not have enough SO_2 monitors to adequately measure SO_2.

EPA Response: EPA disagrees with the commenter's assertion that the SO_2 Data Requirements Rule is proof that Maryland currently does not have an adequate monitoring network for SO_2, and therefore cannot meet the section 110(a)(2)(B) requirements. EPA disagrees with the commenter for three reasons.

First, in this action, EPA is evaluating the state's infrastructure SIP submission for the 2015 ozone NAAQS. Accordingly, for purposes of section 110(a)(2)(B), EPA is evaluating whether Maryland has SIP provisions that provide for things such as required air quality monitoring and submission of required data with respect to the ozone NAAQS, not the SO_2 NAAQS. The scope of EPA's evaluation of section 110(a)(2)(B) is described in the agency's guidance for infrastructure SIP submissions.[5]

Second, EPA has determined that Maryland has met the requirements of section 110(a)(2)(B) for the 2015 ozone NAAQS. Section 110(a)(2)(B) of the CAA requires that each plan shall provide for the establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to EPA. As part of its determination, EPA verified the scope and continuing validity of the State law authority cited in Maryland's October 11, 2018

[4] A programmatic joint evaluation review of Maryland's Air Pollution Control Section 105 Grant work plan was conducted most recently between MDE and EPA on April 17, 2019.

[5] Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements. 83 FR 62998 (December 6, 2018).

infrastructure SIP submission. Additionally, Maryland has SIP approved regulations located under COMAR 26.11.04.02 specifying that methods of measuring ambient air quality levels shall be aligned with those specified in 40 CFR parts 50, 51, 53 and 58, as amended. In addition, the State has submitted, and EPA has approved, annual network monitoring plans that specifically address the monitoring network requirements for the ozone NAAQS throughout Maryland. Most recently, EPA approved the 2018 annual network monitoring plan and concluded that Maryland's network of monitors meets regulatory requirements and is consistent with applicable guidance.[6]

Finally, the commenter is also incorrect with respect to the current status of SO_2 monitoring in Maryland. Although not relevant in the context of this action on an infrastructure SIP submission for the 2015 ozone NAAQS, EPA notes that the DRR cited by the commenter did not specifically find that Maryland lacked sufficient SO_2 monitors to monitor adequately for purposes of the SO_2 NAAQS. Instead, the DRR required that states identify to EPA by January 15, 2016, those sources of SO_2 within their jurisdiction emitting more than 2,000 tons per year (tpy) of SO_2, or other SO_2 sources or clusters of SO_2 sources warranting evaluation. The DRR then gave states three options for characterizing SO_2 concentrations around these sources: (1) By installing and using SO_2 monitors; (2) by modelling SO_2 concentrations; or (3) by adopting SO_2 limits for the source to keep it below the 2,000 tpy threshold. States were required to choose an option for each source by July 1, 2016. For installation of a new SO_2 monitor(s), states were to include information about the new monitor in the annual network monitoring plan by July 1, 2016. Maryland's 2016 annual monitoring plan identified any new SO_2 monitors to be installed, and EPA's approval of that plan confirmed that the placement of any new SO_2 monitors was acceptable.[7] More importantly, Maryland was not even required to install monitors if it chose to do SO_2 modeling instead, so any perceived lack of SO_2 monitors could be remedied by modeling. EPA has no information that Maryland is not at this time meeting its obligations under the DRR, even if that were relevant in the context of EPA's evaluation of the State's compliance with section 110(a)(2)(B) in the context of an infrastructure SIP submission for the 2015 ozone NAAQS, which it is not.

III. Final Action

EPA is approving Maryland's October 11, 2018 infrastructure SIP submission which addresses the basic program elements, or portions thereof, specified in sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, necessary to implement, maintain, and enforce the 2015 ozone NAAQS. This rulemaking does not address section 110(a)(2)(I), or the NNSR permitting program requirements of section 110(a)(2)(C), which pertain to the nonattainment planning requirements of part D of the CAA. States are required to make other SIP submissions to meet those nonattainment area requirements later, after completion of designations, and, if required, would be due to EPA by the dates statutorily prescribed in CAA part D, subpart 2. Because the CAA directs states to make SIP submissions to address nonattainment plan requirements on a separate schedule, EPA does not interpret the CAA to require states to address these requirements in the infrastructure SIP submission due three years after adoption of a new or revised NAAQS.

Additionally, this rulemaking does not address CAA section 110(a)(2)(D)(i)(I) (significant contribution to nonattainment or interference of maintenance through interstate transport of air emissions) for the 2015 ozone NAAQS because Maryland's infrastructure SIP submission did not include these elements. EPA will take later, separate action on these requirements once they have been submitted.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

[6] A copy of EPA's approval letter is in the docket for this action.

[7] MDE included its DRR monitoring information in an addendum to the State's 2016 annual monitoring network plan. Maryland's 2016 annual monitoring network plan was approved by EPA on November 10, 2016. For reference, a copy of MDE's DRR addendum to their 2016 annual monitoring network plan can be located in the docket for this rulemaking action at *https://www.regulations.gov,* Docket ID Number EPA–R03–OAR–2019–0036.

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 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 pertaining to Maryland's section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: *August 29, 2019.*

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry ''Section 110(a)(2) Infrastructure Requirements for the 2015 ozone NAAQS'' at the end of the tableto read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2015 ozone NAAQS.	Statewide	10/10/2018	9/18/2019, [Insert **Federal Register** citation].	Part 52.1070 is amended. This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action does not address CAA sections 110(a)(D)(i)(I) and 110(a)(2)(I), nor does it address the portion of section 110(a)(2)(C) related to NNSR.

[FR Doc. 2019–19670 Filed 9–17–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RIN 0648–XY029

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Pot Catcher/Processors in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2019 Pacific cod total allowable catch allocated to catcher/processors using pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 15, 2019, through 2400 hours, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 Pacific cod total allowable catch (TAC) allocated to catcher/processors using pot gear in the BSAI is 2,410 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000; March 13, 2019).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2019 Pacific cod TAC allocated as a directed fishing allowance to catcher/processors using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries

data in a timely fashion and would delay the closure of directed fishing for Pacific cod by pot catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 12, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1901 *et seq.*

Dated: September 13, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–20181 Filed 9–13–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02]

RIN 0648–XY035

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2019 total allowable catch of sablefish allocated to vessels using trawl gear in the Western Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 13, 2019, through 2400 hours, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 total allowable catch (TAC) of sablefish allocated to vessels using trawl gear in the Western Regulatory Area of the GOA is 316 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish of the GOA (84 FR 9416, March 14, 2019).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2019 TAC of sablefish allocated to vessels using trawl gear in the Western Regulatory Area of the GOA will be reached. Therefore, NMFS is requiring that sablefish caught by vessels using trawl gear in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(a).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of sablefish by vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 12, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 13, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–20187 Filed 9–13–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RIN 0648–XY033

Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is exchanging allocations of Amendment 80 cooperative quota (CQ) for Amendment 80 acceptable biological catch (ABC) reserves. This action is necessary to allow the 2019 total allowable catch of flathead sole, rock sole, and yellowfin sole in the Bering Sea and Aleutian Islands management area to be harvested.

DATES: Effective September 18, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 flathead sole, rock sole, and yellowfin sole Amendment 80 allocations of the total allowable catch (TAC) specified in the BSAI are 13,149 metric tons (mt); 30,860 mt; and 117,171 mt; respectively, as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and flatfish exchange (84 FR 34070, July 17, 2019).

The 2019 flathead sole, rock sole, and yellowfin sole Amendment 80 ABC reserves are 43,348 mt; 69,317 mt; and 95,516 mt; respectively, as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000; March 13, 2019) and flatfish exchange (84 FR 34070, July 17, 2019).

The Alaska Seafood Cooperative has requested that NMFS exchange 2,900 mt of rock sole and 700 mt of yellowfin sole Amendment 80 allocation of the TAC for 3,600 mt of flathead sole Amendment 80 ABC reserves under § 679.91(i). Therefore, in accordance with § 679.91(i), NMFS exchanges 2,900 mt of rock sole and 700 mt of yellowfin sole Amendment 80 allocation of the TAC for 3,600 mt of flathead sole Amendment 80 ABC reserves in the BSAI. This action also decreases and increases the TACs and Amendment 80 ABC reserves by the corresponding amounts. Tables 11 and 13 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and as revised (84 FR 34070; July 17, 2019) are further revised as follows:

TABLE 11—FINAL 2019 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian district	Central Aleutian district	Western Aleutian district	BSAI	BSAI	BSAI
TAC	11,009	8,385	10,000	21,300	39,400	154,900
CDQ	1,178	897	1,070	1,552	5,440	16,078
ICA	100	60	10	3,000	6,000	4,000
BSAI trawl limited access	973	743	178	.....	.....	18,351
Amendment 80	8,758	6,685	8,742	16,749	27,960	116,471

Note: Sector apportionments may not total precisely due to rounding.

TABLE 13—FINAL 2019 AND 2020 ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	2019 Flathead sole	2019 Rock sole	2019 Yellowfin sole	2020 [1] Flathead sole	2020 [1] Rock sole	2020 [1] Yellowfin sole
ABC	66,625	118,900	263,200	68,448	143,700	257,800
TAC	21,300	39,400	154,900	14,500	57,100	166,425
ABC surplus	45,325	79,500	108,300	53,948	86,600	91,375
ABC reserve	45,325	79,500	108,300	53,948	86,600	91,375
CDQ ABC reserve	5,577	7,283	12,084	5,772	9,266	9,777
Amendment 80 ABC reserve	39,748	72,217	96,216	48,176	77,334	81,598

[1] The 2020 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2019.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the flatfish exchange by the Alaska Seafood Cooperative in the BSAI. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 9, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 13, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–20170 Filed 9–13–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 181
Wednesday, September 18, 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.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AD35

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, our, or we) is proposing to amend its investment regulations to allow Farm Credit System (FCS or System) associations to purchase and hold the portion of certain loans that non-FCS lenders originate and sell in the secondary market, and that the United States Department of Agriculture (USDA) unconditionally guarantees or insures as to the timely payment of principal and interest.

DATES: Please send us your comments on or before November 18, 2019.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act of 1973, as amended, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at*reg-comm@fca.gov.*
- *FCA website: http://www.fca.gov.* Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Acting Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our website at *http://www.fca.gov.* Once you are on the website, click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT:
David J. Lewandrowski, Senior Policy Analyst, Office of Regulatory Policy, (703) 883–4212, *lewandrowskid@fca.gov;* or
Jeremy R. Edelstein, Associate Director of Finance and Capital Market Team, Office of Regulatory Policy, (703) 883–4497, *edelsteinj@fca.gov;* or
Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, *katzr@fca.gov.*

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of the proposed rule are to authorize FCS associations to buy as investments for risk management purposes, portions of certain loans that non-System lenders originate, and the USDA fully guarantees as to principal and interest to:

- Augment the liquidity of rural credit markets;
- Reduce the capital burden on community banks and other non-System lenders who choose to sell their USDA guaranteed portions of loans, so they may extend additional credit in rural areas; and
- Enhance the ability of associations to manage risk.

II. Background

In general, the authority for FCS association to buy and sell certain types of financial instruments, including the ones addressed in this proposed rule, is found in Sections 2.2(11) and 2.12(17) of the Farm Credit Act of 1971, as amended (Act). In 2014, FCA proposed amendments to the investment regulation for FCS associations.[1] The proposed rule would have authorized associations to purchase and hold, as investments, obligations issued or guaranteed by the United States or its agencies for risk management purposes. Under the proposed rule, no association could hold investments in an amount that exceeds 10 percent of its total outstanding loans.

FCA received more than 1,250 comment letters on this proposal. After consideration of these comments, FCA changed the term ''obligations'' in the proposed rule to the more narrow term ''securities'' in the final rule. FCA also added § 615.5140(b)(2) to the final regulation to clarify that loans purchased in the secondary market that are unconditionally guaranteed or insured by the U.S. Government or its agencies as to principal and interest are not eligible risk management investment for FCS associations. Such loans meet the statutory definition of ''obligations'', but we did not include them as securities in the final rule.

Shortly after we approved and published the final rule, several FCS associations, community banks, and a broker-dealer expressed concern that final § 615.5140(b)(1) and (2) would disrupt the secondary market for the portions of loans that USDA fully and unconditionally guarantees as to both principal and interest. Representatives of the Office of the Administrator for the Rural Business Cooperative Service at USDA (USDA Administrator) contacted FCA to support these parties. More specifically, concerns were raised about the potential impact that the final rule could have on the secondary market for USDA-guaranteed portions of loans and, more broadly, on rural development. The USDA Administrator, two community banks, and the broker-dealer warned that the withdrawal of FCS associations from this market could substantially reduce the liquidity in this

[1] *See* 79 FR 43301, July 25, 2014.

market and the availability of credit in rural areas.

In response to the concerns raised by the USDA Administrator and market participants, FCA decided to review final § 615.5140(b)(1) and (2) and consider their impact on the secondary market for loans that the USDA fully and unconditionally guarantees as to principal and interest. As a result of this review, FCA is now initiating another rulemaking that would amend § 615.5140(b)(2) to exempt USDA-guaranteed loan portions from § 615.5140(b)(1), as well as a conforming change to § 615.5140(b)(3).

III. Secondary Market for USDA Guarantees of Loans

USDA may guarantee up to 90 percent of certain loans that FCS banks and associations, commercial banks, and other lenders originate.[2] These lenders may either hold the guaranteed portion of such loans or sell them in the secondary market.[3] Data provided by USDA indicates that loan originators retain approximately 60 percent of the USDA-guaranteed portions of such loans and sell the remaining 40 percent in the secondary market, usually at a premium. There are risks to purchasers of these guaranteed portions of loans.[4] According to the Rural Development Agency at USDA, FCS associations buy approximately 40 percent of such USDA-loan guarantees in the secondary market.

IV. Association Investment Authorities

FCS associations derive their authority to make investments from sections 2.2(10) 2.2(11), 2.12(17), and 2.12(18) of the Act.[5] The statutory provisions that are most relevant to this rulemaking are sections 2.2(11) and 2.12(17), which authorize System associations to ''buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the Farm Credit System.''

Pursuant to its authority under section 5.17(a)(9) of the Act,[6] FCA promulgated current § 615.5140(b), which allows FCS associations to buy and hold obligations issued or guaranteed by the United States subject to certain restrictions. More specifically, § 615.5140(b)(1) and (2) specify that the obligations that associations acquire must be securities, but not loans, while § 615.5140(b)(4) imposes a portfolio cap of 10 percent of outstanding loans on such investments. The intended purpose of these limits in the regulation is to ensure that the FCS continue to operate as cooperative lending institutions that are owned and controlled by the farmers, ranchers, aquatic producers and harvesters, and cooperatives that borrow from them. As discussed in the preamble to the final rule, FCA decided, in response to the comment letters, that placing limits on association investments is necessary so that loans to eligible borrowers constitute most of the assets of each FCS association.

Explanation of the Proposed Rule

As discussed above, certain external parties communicated concerns that the final rule may have had the unintended consequence of disrupting the secondary market for USDA-guaranteed portions of loans. As noted above, FCS institutions constitute approximately 40 percent of the buyers in this market even though System purchases of USDA-guaranteed loan portions total only about $200 million per year. In this context, the total amount of loan guarantees purchased in the secondary market represents a minimal portion of System assets, and it does not fundamentally shift the System away from its core mandate of lending to its voting member-borrowers, who are agricultural and aquatic producers, their cooperatives, and rural utilities. However, from the perspective of the USDA and certain secondary market participants for these loan guarantees, the impact is significant. The final rule may have an unintended impact by causing 40 percent of the existing buyers to be excluded from the secondary market. More importantly, USDA loan guarantees contribute to the flow of adequate and affordable credit into rural areas, which is related to the System's mission as a government-sponsored enterprise.

For these reasons, FCA is now proposing an amendment to § 615.5140(b)(2) that would authorize FCS associations to help manage risk by holding portions of loans that: (1) Lenders, which are not Farm Credit System institutions, originate and then sell in the secondary market; and (2) USDA fully and unconditionally guarantees or insures as to both principal and interest. These loan obligations are within the statutory authority of associations in sections 2.2(11) and 2.12(17) of the Act, and the authority to purchase these obligations will remain subject to the portfolio restrictions in § 615.5140(b)(4).

Under proposed § 615.5140(b)(2), FCS associations would purchase the USDA-guaranteed portions of loans that non-System lenders, most of whom are commercial banks, originate. The loan originators decide whether to retain or sell the guaranteed portions of these loans. Originators that sell USDA loan guarantees in the secondary market, whether directly or through brokers, negotiate the terms of sale, and thus have knowledge of the buyers' identities. As a result, the secondary market for USDA guaranteed loans brings together willing sellers and buyers and, therefore, the proposed regulation encourages cooperation between FCS associations, community banks, larger banks, and other non-System lenders.

The scope of the proposed rule is limited to USDA loan guarantees, which is what USDA, community banks, the FCS, and a broker-dealer asked FCA to reconsider. For this reason, loans guaranteed by other United States government agencies are not in the scope of this rulemaking and, therefore, FCA is not addressing them in this proposed rule. However, FCA points out

[2] USDA guarantees loans to borrowers under a variety of programs pursuant to its authorities, primarily subtitles A and B of the Consolidated Farm and Rural Development Act and title VI of the Rural Electrification Act of 1936.

[3] Lenders who originate loans that are eligible for USDA guarantees only obtain a conditional guarantee from the USDA. The guarantee is conditional on the lender complying with the origination and servicing regulatory requirements applicable to the loan, as well as other program requirements. Loan originators may sell the USDA-guaranteed portions of their loans, in the form of an assignment, to other persons, including individuals, corporate entities, and other financial institutions. See, 7 CFR 762.160, 1779.65, 3575.65, and 4279.75. Pursuant to these regulations, the seller must submit a form to the USDA that identifies the party that becomes the holder of record. *Id.* A purchaser who subsequently assigns the loan guarantee to another party must similarly comply with the same requirement. Only an assignee who is listed as the holder of record for the loan guarantee may seek payment from the USDA if the borrower defaults. The USDA provides an unconditional guarantee to a good-faith guarantee holder who purchased the guaranteed portion of the loan in the secondary market.

[4] The primary risks are premium risk and operational risk. The USDA-guaranteed portions of these loans typically command significant premiums in the secondary market. The payment of premiums demonstrates the high demand for USDA loan guarantees in the marketplace because buyers consider them as financially valuable assets. However, premiums are not covered by the USDA guarantee. The buyer may not always recover the full amount of the premium paid if the borrower defaults on the loan. Operational risk to purchasers center on proper transfer of the assignment of the guarantee so that it is recognized by USDA.

[5] Sections 2.2(10) and 2.12(18) of the Act authorize associations to invest their funds, as may be approved by their funding bank under FCA regulations. These two provisions also allow associations to deposit their funds and securities with their funding bank, a member bank of the Federal Reserve System or any bank insured by the Federal Deposit Insurance Corporation.

[6] Section 5.17(a)(9) of the Act authorizes FCA to ''prescribe rules and regulations necessary or appropriate for carrying out this Act.'' Additionally, the introductory text to sections 2.2 and 2.12 of the Act state that each association is subject to regulation by FCA.

that the existing regulation allows FCS associations to purchase securities that are issued, insured, or guaranteed by the United States or its agencies, which includes securities issued by the Small Business Administration and the Government National Mortgage Association. Additionally, associations may buy securities issued by Farmer Mac pursuant to § 615.5174.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608; sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

■ 2. Section 615.5140 is amended by revising paragraph (b)(2) and paragraph (b)(3) introductory text to read as follows:

§ 615.5140 Eligible investments.

* * * * *

(b) * * *

(2) *Secondary market Government-guaranteed loans.* In addition to investing in the securities described in paragraph (b)(1) of this section, each Farm Credit System association may also manage risk by holding those portions of loans that:

(i) Lenders, which are not Farm Credit System institutions, originate and then sell in the secondary market; and

(ii) The United States Department of Agriculture fully and unconditionally guarantees or insures as to both principal and interest.

(3) *Risk management requirements.* Each association that purchases investments pursuant to paragraphs (b)(1) and (2) of this section-must document how its investment activities contribute to managing risks as required by paragraph (b)(1) of this section. Such documentation must address and evidence that the association:

* * * * *

Dated: August 14, 2019.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2019–19917 Filed 9–17–19; 8:45 am]

BILLING CODE 6705–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 39, and 140

RIN 3038–AE65

Exemption From Derivatives Clearing Organization Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On July 23, 2019, the Commodity Futures Trading Commission (Commission) published in the **Federal Register** a supplemental notice of proposed rulemaking (NPRM) titled Exemption from Derivatives Clearing Organization Registration. The comment period for the supplemental NPRM closes on September 23, 2019. The Commission is extending the comment period for this supplemental NPRM by an additional 60 days.

DATES: The comment period for the supplemental NPRM titled Exemption from Derivatives Clearing Organization Registration is extended through November 22, 2019.

ADDRESSES: You may submit comments, identified by ''Exemption from Derivatives Clearing Organization Registration'' and RIN number 3038–AE65, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202–418–5096, *edonovan@cftc.gov;* Parisa Abadi, Associate Director, 202–418–6620, *pabadi@cftc.gov;* Eileen R. Chotiner, Senior Compliance Analyst, 202–418–5467, *echotiner@cftc.gov;* Brian Baum, Special Counsel, 202–418–5654, *bbaum@cftc.gov;* August A. Imholtz III, Special Counsel, 202–418–5140, *aimholtz@cftc.gov;* Abigail S. Knauff, Special Counsel, 202–418–5123, *aknauff@cftc.gov;* Division of Clearing and Risk, Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On July 23, 2019, the Commission published in the **Federal Register** a supplemental NPRM proposing amendments to permit derivatives clearing organizations that

[1] 17 CFR 145.9.

are exempt from registration (exempt DCOs) to clear swaps for U.S. customers under certain circumstances.[2] To facilitate these proposed amdendments, the Commission also proposed to allow persons located outside of the United States to accept funds from U.S. persons to margin swaps cleared at an exempt DCO, without registering as futures commission merchants (FCMs). In addition, the Commission proposed certain amendments to the delegation provisions in part 140 of its regulations. The comment period for the supplemental NPRM closes on September 23, 2019. As requested by commenters, the Commission is extending the comment period for this supplemental NPRM by an additional 60 days.[3] This extension of the comment period will allow interested persons additional time to analyze the proposal and prepare their comments.

Issued in Washington, DC, on September 13, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendix to Exemption From Derivatives Clearing Organization Registration—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, and Berkovitz voted in the affirmative. No Commissioner voted in the negative. Commissioner Stump was recused from consideration of this matter.

[FR Doc. 2019–20189 Filed 9–17–19; 8:45 am]

BILLING CODE 6351–01–P

[2] Exemption from Derivatives Clearing Organization Registration, 84 FR 35456 (July 23, 2019).

[3] *See* Comment Letter from the Futures Industry Association, the Securities Industry and Financial Markets Association, the Intercontinental Exchange, Inc., and the Managed Funds Association (August 30, 2019), available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62171&SearchText=.*

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038–AE87

Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On July 19, 2019, the Commodity Futures Trading Commission (Commission) published in the **Federal Register** a notice of proposed rulemaking (NPRM) titled Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations. The comment period for the NPRM closes on September 17, 2019. The Commission is extending the comment period for this NPRM by an additional 60 days.

DATES: The comment period for the NPRM titled Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations is extended through November 18, 2019.

ADDRESSES: You may submit comments, identified by ''Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations'' and RIN number 3038–AE87, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202–418–5096, *edonovan@cftc.gov;* Parisa Abadi, Associate Director, 202–418–6620, *pabadi@cftc.gov;* Eileen R. Chotiner, Senior Compliance Analyst, 202–418–5467, *echotiner@cftc.gov;* Brian Baum, Special Counsel, 202–418–5654, *bbaum@cftc.gov;* August A. Imholtz III, Special Counsel, 202–418–5140, *aimholtz@cftc.gov;* Abigail S. Knauff, Special Counsel, 202–418–5123, *aknauff@cftc.gov;* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On July 19, 2019, the Commission published in the **Federal Register** an NPRM proposing amendments to its regulations that would permit derivatives clearing organizations (DCOs) organized outside of the United States that do not pose substantial risk to the U.S. financial system to register with the Commission yet comply with the core principles applicable to DCOs set forth in the Commodity Exchange Act through compliance with their home country regulatory regime, subject to certain conditions and limitations.[2] The Commission also proposed certain related amendments to the delegation provisions in its regulations. The comment period for the NPRM closes on September 17, 2019. As requested by commenters, the Commission is extending the comment period for this NPRM by an additional 60 days.[3] This extension of the comment period will allow interested persons additional time to analyze the proposal and prepare their comments.

Issued in Washington, DC, on September 13, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

[1] 17 CFR 145.9.

[2] Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations, 84 FR 34819 (July 19, 2019).

[3] *See* Comment Letter from the Futures Industry Association, the Securities Industry and Financial Markets Association, the Intercontinental Exchange, Inc., and the Managed Funds Association (August 30, 2019), available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62171&SearchText=.*

Appendix to Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, and Berkovitz voted in the affirmative. No Commissioner voted in the negative. Commissioner Stump was recused from consideration of this matter.

[FR Doc. 2019–20188 Filed 9–17–19; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 007–2019]

Privacy Act of 1974; Implementation

AGENCY: United States Department of Justice, Federal Bureau of Investigation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Bureau of Investigation (FBI), a component of the Department of Justice (Department or DOJ), has published a notice of a modified Privacy Act system of records, ''National Crime Information Center (NCIC),'' JUSTICE/FBI–001. In this notice of proposed rulemaking, the FBI proposes to amend the existing regulations exempting the NCIC from certain provisions of the Privacy Act in order to provide greater clarity on the reasons for the exemptions, including interference with the FBI's mission to detect, deter, and prosecute crimes and to protect the national security. Additionally, the NCIC's current Privacy Act exemption regulations refer to alternative procedures for individuals to access their criminal history record information. However, criminal history record information is maintained in the Next Generation Identification (NGI) System, JUSTICE_FBI 009, (May 5, 2016), and therefore the access provisions for criminal history record information are more appropriately set forth in the Privacy Act exemption regulations for NGI. The alternative process for accessing criminal history record information is set forth in the Code of Federal Regulations. The amendments to the NCIC's Privacy Act exemption regulations do not affect an individual's ability to access his criminal history record information. The Department proposes to amend its Privacy Act regulations by amending the existing Privacy Act exemptions for records in the NCIC, as set forth below. Public comment is invited.

DATES: Comments must be received by October 18, 2019.

ADDRESSES: You may send comments by any of the following methods:

- *Email: privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the CPCLO Order No. in the subject line of the message.
- *Fax:* 202–307–0693. To ensure proper handling, please reference the CPCLO Order No. on the cover page of the fax.
- *Mail:* United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N St. NE, Suite 8W–300, Washington, DC 20530. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes. To ensure proper handling, please reference the CPCLO Order No. in your correspondence.
- *Federal eRulemaking Portal: http://www.regulations.gov.* When submitting comments electronically, you must include the CPCLO Order No. in the subject box. Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase PERSONAL IDENTIFYING INFORMATION in the first paragraph of your comment. You must also place all personal identifying information that you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase CONFIDENTIAL BUSINESS INFORMATION in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, may be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph, below.

FOR FURTHER INFORMATION CONTACT: Katherine M. Bond, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW, Washington, DC 20535–0001, telephone 202–324–3000.

SUPPLEMENTARY INFORMATION:

National Crime Information Center

The FBI has established a modified Privacy Act system of records, ''National Crime Information Center (NCIC),'' JUSTICE/FBI–001. Established in 1967, the NCIC is a national criminal justice information system linking criminal (and authorized non-criminal) justice agencies located in the 50 states, the District of Columbia, U.S. territories and possessions, and selected foreign countries to facilitate the cooperative sharing of criminal justice information. The NCIC provides a system to receive and maintain information contributed by participating agencies relating to criminal justice and national security. Information maintained in the NCIC is readily accessible for authorized criminal justice purposes by authorized users via text-based queries (*i.e.,* using names and other descriptive data). The FBI has previously published exemptions from the Privacy Act for the NCIC. *See* 28 CFR 16.96(g) through (i). In this notice of proposed rulemaking, the FBI proposes to amend the existing regulations exempting the NCIC from certain provisions of the Privacy Act in order to provide greater clarity on the reasons for the exemptions, including interference with the FBI's mission to detect, deter, and prosecute crimes and to protect the national security.

Executive Orders 12866 and 13563—Regulatory Review

In accordance with 5 U.S.C. 552a(j) and 552a(k), this proposed action is subject to formal rulemaking procedures

by giving interested persons an opportunity to participate in the rulemaking process ''through submission of written data, views, or arguments,'' pursuant to 5 U.S.C. 553. The purpose of this proposed rule is to clarify the Privacy Act exemptions taken for the NCIC and explain the rationales therefore. This rule does not raise novel legal or policy issues, nor does it adversely affect the economy, the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof in a material way. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual's entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.,* requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph, above. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *http://www.sba.gov/advo/archive/sum_sbrefa.html.* This proposed rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

Executive Order 13132—Federalism

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

Executive Order 12988—Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This proposed rule will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000, as adjusted for inflation, or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule. The records that are contributed to this system are created by the FBI or other law enforcement and governmental entities. Sharing of this information electronically will not increase the paperwork burden on the public.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, 28 CFR part 16 is proposed to be amended as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

■ 2. Amend § 16.96 by:
■ a. Revising paragraph (g) and (h) and
■ b. Removing paragraph (i).

The revisions read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) (H), and (I), (e)(5), (e)(8), (f), and (g):

(1) National Crime Information Center (NCIC) (JUSTICE/FBI–001).

(2) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Where the FBI determines compliance with an exempted provision would not appear to interfere with or adversely affect interests of the United States or other system stakeholders, the FBI in its sole discretion may waive an exemption in whole or in part; exercise of this discretionary waiver prerogative in a particular matter shall not create any entitlement to or expectation of waiver in that matter or any other matter. As a condition of discretionary waiver, the FBI in its sole discretion may impose any restrictions deemed advisable by the FBI (including, but not limited to, restrictions on the location, manner, or scope of notice, access or amendment).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal law enforcement or national security investigative interest in the individual by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and defuse any potential acts

of terrorism or other potential violations of criminal law. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to circumvent the investigation (*e.g.,* destroy evidence or flee the area to avoid investigation).

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the accounting disclosures provision of subsection (c)(3). The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases.

(3) From subsection (d), (e)(4)(G) and (H), (e)(8), (f) and (g) because these provisions concern individual access to and amendment of law enforcement and intelligence records and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the investigative interest of the FBI and/or other law enforcement or intelligence agencies. Providing access could compromise sensitive law enforcement information; disclose information that could constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, and witnesses. The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases with subjects of the information.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. Relevance and necessity are questions of judgment and timing. For example, what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(5) From subsections (e)(2) and (3) because it is not feasible to comply with these provisions given the nature of this system. The majority of the records in this system come from other federal, state, local, joint, foreign, tribal, and international agencies; therefore, it is not feasible for the FBI to collect information directly from the individual or to provide notice. Additionally, the application of this provision could present a serious impediment to the FBI's responsibilities to detect, deter, and prosecute crimes and to protect the national security. Application of these provisions would put the subject of an investigation on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has already been published in the **Federal Register** through the SORN documentation. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement and intelligence purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With time, additional facts, or analysis, information may acquire new significance. The restrictions imposed by subsection (e)(5) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. Although the FBI has claimed this exemption, it continuously works with its federal, state, local, tribal, and international partners to maintain the accuracy of records to the greatest extent practicable. The FBI does so with established policies and practices. The criminal justice and national security communities have a strong operational interest in using up-to-date and accurate records and will foster relationships with partners to further this interest.

Dated: August 28, 2019.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

[FR Doc. 2019–19448 Filed 9–17–19; 8:45 am]

BILLING CODE 4410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R01–OW–2019–0521; FRL–9999–61–Region 1]

Ocean Disposal; Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule

SUMMARY: The Environmental Protection Agency (EPA) today proposes to designate one ocean dredged material disposal site (ODMDS), the Isles of Shoals North Disposal Site (IOSN), located approximately 10.8 nautical miles (nmi) east of Portsmouth, New Hampshire, pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). This action is necessary to serve the long-term need for an ODMDS for the possible future disposal of suitable dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts.

The proposed action is described in a Draft Environmental Assessment and Evaluation Study (DEA) also being released today for public comment. The DEA recommends designation of the proposed IOSN pursuant to the MPRSA as the preferred alternative from the range of options considered. The draft Site Management and Monitoring Plan (SMMP) is provided as Appendix G of the DEA.

DATES: Written comments must be received on or before October 18, 2019.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–R01–OW–2019–0521, through the Federal eRulemaking Portal: *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. 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*.

Docket: Publicly available docket materials are available either electronically at regulations.gov or on the EPA Region 1 Ocean Dumping web page at *https://www.epa.gov/ocean-dumping/managing-ocean-dumping-epa-region-1*. They are also available in hard copy during normal business hours at the EPA Region 1 Library, 5 Post Office Square, Boston, MA 02109.

The supporting document for this site designation is the *Draft Environmental Assessment on the Environmental Assessment and Evaluation Study for Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region.*

FOR FURTHER INFORMATION CONTACT: Ms. Olga Guza-Pabst, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Mail Code: 06–1, Boston, MA 02109–3912, telephone: (617) 918–1542; fax: (617) 918–0542; email address: *Guza-Pabst.Olga@epa.gov.*

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

I. Background
II. Purpose and Need
III. Potentially Affected Entities
IV. Disposal Site Description
V. Compliance With Statutory and Regulatory Authorities
  A. Marine Protection, Research, and Sanctuaries Act and Clean Water Act
  B. National Environmental Policy Act
  C. Coastal Zone Management Act
  D. Endangered Species Act
  E. Magnuson-Stevens Fishery Conservation and Management Act
VI. Restrictions
VII. Proposed Action
VIII. Supporting Documents
IX. Statutory and Executive Order Reviews

I. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. 1412, gives EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the Region in which the sites are located. The preferred alternative site, IOSN, is located within the area assigned to EPA Region 1, *see* 40 CFR 1.7(b)(1); therefore, this designation is being proposed pursuant to the EPA Region 1 Administrator's delegated authority.

EPA regulations (40 CFR 228.4(e)(1)) promulgated under the MPRSA require, among other things, that EPA designate ocean disposal sites by promulgation in 40 CFR part 228. Designated ocean disposal sites are codified at 40 CFR 228.15. EPA-designated sites require a SMMP that will help ensure environmentally sound monitoring and management of the sites. Section 103(b) of the MPRSA, 33 U.S.C. 1413(b), provides that any ocean disposal of dredged material should occur at EPA-designated sites to the maximum extent feasible. In the absence of an available EPA-designated ocean disposal site, however, the USACE is authorized to ''select'' appropriate ocean disposal sites under MPRSA section 103(b). MPRSA section 103(b) restricts the use of USACE-selected sites to two separate five-year terms. There are no EPA-designated dredged material disposal sites off the coast of southern Maine, New Hampshire, and northern Massachusetts. There is one USACE-selected site in this area, the Cape Arundel Disposal Site (CADS), but it will no longer be available after December 31, 2021, when its Congressionally-authorized term of use expires.

Regulations implementing MPRSA are set forth at 40 CFR parts 220 to 229 (Ocean Dumping Regulations). With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit or authorization issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the U.S. Army Corps of Engineers (USACE). Under section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (*e.g.,* vessels, fish wastes, burial at sea).[1] Under section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits and authorizations (in the case of USACE projects) for the ocean dumping of dredged material. This permitting authority has been delegated to the District Engineer of the USACE New England District. The USACE makes determinations whether to issue permits and authorizations for dredged material based on the application of, among other things, EPA's ocean dumping criteria regulations. *See* 40 CFR 227.4, 227.5 and 227.6. MPRSA permits and federal projects involving ocean dumping of dredged material are subject to EPA review and concurrence in accordance with 33 U.S.C. 1413(c). EPA may concur with or without conditions or decline to concur on the permit, *i.e.,* non-concur. If EPA concurs with conditions, the final permit must include those conditions. If EPA declines to concur (non-concurs) on an ocean dumping permit for dredged material, USACE cannot issue the permit.

This rule proposes to designate the proposed IOSN for the ocean disposal of suitable dredged material. EPA has conducted the disposal site designation process consistent with the requirements of the MPRSA, the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), and other relevant statutes and regulations. The site designation is intended to be effective for an indefinite period of time.

It is important to understand that the designation of an (ODMDS) by EPA does not by itself authorize the disposal at that site of dredged material from any particular dredging project. For example, designation of the proposed IOSN would only make that ocean site available to receive dredged material from a specific project if no environmentally preferable, practicable alternative for managing that dredged material exists, and if analysis of the dredged material indicates that it is suitable for ocean disposal under the MPRSA. *See* 40 CFR 227.1(b), 227.2 and 227.3; 40 CFR part 227, subparts B and C.

Thus, each proposed dredging project will be evaluated on a case-by-case basis to determine whether there are practicable, environmentally preferable alternatives to ocean disposal (*i.e.,* whether there is a need for ocean disposal). *See* 40 CFR 227.16. In addition, the dredged material from each proposed disposal project will be subject to MPRSA sediment testing requirements to determine its suitability for possible ocean disposal at an approved site. *See* 40 CFR 227.6. Alternatives to ocean disposal that will be considered include upland disposal and beneficial uses such as beach nourishment. If environmentally preferable, practicable disposal alternatives exist, ocean disposal will not be allowed. EPA also will not approve dredged material for ocean disposal if it determines that the material has the potential to cause unacceptable adverse effects to the marine environment or human health.

[1] The MPRSA also bans ocean disposal of certain types of materials, such as, for example, chemical weapons and medical waste. *See* 33 U.S.C. 1412(a).

See 40 CFR 227.4. The review process for proposed disposal projects is discussed in more detail below and in the draft SMMP.

Dredged material disposal sites designated by EPA under the MPRSA are subject to detailed management and monitoring protocols to track site conditions and prevent the occurrence of unacceptable adverse effects. *See* 33 U.S.C. 1412(c)(3)–(5). The management and monitoring protocols for the proposed IOSN are described in the Draft SMMP. EPA is authorized to close or limit the use of these sites to further disposal activity if their use causes unacceptable adverse impacts to the marine environment or human health.

II. Purpose and Need

The purpose of the proposed action is to designate an ocean disposal site that will provide a long-term dredged material disposal option for dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts. This is necessary to ensure the viability of dredging projects needed to maintain international commerce and navigation through authorized federal navigation projects and to ensure safe vessel passage for public and private entities. The appropriateness of ocean disposal for any specific, individual dredging project will be determined on a case-by-case basis under the permit and authorization (in the case of Corps projects) process under MPRSA.

The need for this effort derives from the following facts: (1) The availability of an ODMDS in the vicinity of southern Maine, New Hampshire, and northern Massachusetts is necessary to help maintain safe navigation of authorized federal channels and permitted actions; (2) projected dredging needs for the area were calculated to be approximately 1.5 million cubic yards (mcy) of material over the next 20 years, which significantly exceeds the capacity of available practicable alternatives to ocean disposal; (3) the states of Maine and New Hampshire have expressed concern that available, practicable dredged material disposal capacity is insufficient to meet projected dredging needs and they requested this designation from EPA; (4) the historically used, in the 1960s and early 1970s, former Isles of Shoals Disposal Site (IOSH) was examined for potential designation, however, this former site is located in an area that contains a diversity of habitats that are not compatible with the ocean disposal of dredged material; and (5) the possibility of expanding the existing CADS to accommodate the region's dredging needs is infeasible, as studies revealed that suitable areas with the capacity for an ODMDS are limited at that site. The existing CADS is a USACE short-term selected site under MPRSA section 103(b) and is scheduled to close on December 31, 2021.

In addition, the closest EPA-designated ODMDSs outside the ''Zone of Siting Feasibility,'' (or ZSF, which is discussed in Section 4 of the DEA), are the Portland Dredged Material Disposal Site (PDS) and the Massachusetts Bay Disposal Site (MBDS). The draw area (*i.e.,* the area from which dredged material would come) for the proposed IOSN disposal site would encompass any projects closer to that site than to either the PDS or MBDS. The center of the ZSF is located about 42 miles from the MBDS and 43 miles from the PDS.

While PDS and MBDS are environmentally sound sites for receiving suitable dredged material, EPA does not consider them to be truly viable options for the southern Maine, New Hampshire, and northern Massachusetts region given their distance from the ZSF, which would significantly increase the transport distance for, and duration of, ocean disposal for dredging projects from that region. This, in turn, would greatly increase the cost of such projects and would likely render many dredging projects too expensive to conduct, thus threatening safe navigation and interfering with marine recreation and commerce. Furthermore, the greater transport distance would also be environmentally detrimental because it would entail greater energy use, increased air emissions, and increased risk of spills or disposal outside of the prescribed ocean dumping zone (''short dumps'') (DEA, Section 7.0). Regarding air emissions, increased hauling distances may require using larger scows with more powerful tug boats, which would use more fuel and cause more emission of air pollutants.

Congress has directed that the disposal of dredged material should take place at EPA-designated sites, rather than USACE-selected sites, when EPA-designated sites are available (*see* MPRSA 103(b)). With the CADS (a USACE-selected site under MPRSA section 103 for short-term use) nearing capacity and expiring on December 31, 2021, EPA's ocean disposal site designation studies were designed to determine whether this site or any other sites should be designated for continued long-term use.

MPRSA criteria for selecting and designating sites require EPA to consider previously used disposal sites or areas, with active or historically used sites given preference in the evaluation assuming all other things equal (40 CFR 228.5(e)). This preference is intended to concentrate the effects, if any, of disposal practices to relatively smaller, discrete areas that have already received dredged material, and avoid distributing any effects over a larger geographic area.

Periodic dredging of harbors and channels and, therefore, dredged material management, are essential for ensuring safe navigation and facilitating marine commerce. This is because the natural processes of erosion and siltation result in sediment accumulation in federal navigation channels, harbors, port facilities, marinas, and other important areas of our water bodies. Unsafe navigational conditions not only threaten public health and safety, but also pose an environmental threat from an increased risk of spills from vessels involved in accidents.

Economic considerations also contribute to the need for dredging (and the environmentally sound management of dredged material). There are many important navigation-dependent businesses and industries in the southern Maine, New Hampshire, and northern Massachusetts region, ranging from shipping (especially the transportation of petroleum fuels and bulk materials), to recreational boating-related businesses, marine transportation, commercial and recreational fishing, interstate ferry operations, and U.S. Navy and U.S. Coast Guard facilities. These businesses and industries contribute substantially to the region's economic output, the gross state product (GSP) of the bordering states, and tax revenue. Continued access to harbors, berths, and mooring areas in the ZSF is vital to ensuring the continued economic health of these industries, and to preserving the ability of the region to import fuels, bulk supplies, and other commodities at competitive prices and to preserve ocean access for the commercial fishing fleet that exists within the ZSF. In addition, preserving navigation channels, marinas, harbors, berthing areas, and other marine resources, improves the quality of life for residents and visitors to the southern Maine, New Hampshire, and northern Massachusetts region by facilitating recreational boating and associated activities, such as fishing and sightseeing.

III. Potentially Affected Entities

Entities potentially affected by this proposed action are persons, organizations, or government bodies seeking to dispose of dredged material

in ocean waters off the coast of southern Maine, New Hampshire, and northern Massachusetts, subject to the requirements of the MPRSA and their implementing regulations. This proposed rule is expected to be primarily of relevance to:

(a) Parties seeking MPRSA permits from to transport dredged material for disposal into the ocean waters off the coast of southern Maine, New Hampshire, and northern Massachusetts, and (b) to the USACE itself for its own dredged material projects involving ocean disposal.

Potentially affected entities and categories of entities that may seek to use the proposed ocean dredged material disposal site and would be subject to the proposed rule include:

Category	Examples of potentially affected entities
Federal government.	USACE (Civil Works Projects), U.S. Navy, U.S. Coast Guard, and other federal agencies.
State, local, and tribal governments.	Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring ocean disposal of dredged material associated with public works projects.
Industry and general public.	Port authorities, shipyards and marine repair facilities, marinas and boatyards, and berth owners.

This table is not intended to be comprehensive, but rather provides a guide for readers regarding the types of entities that could potentially be affected should the proposed rule become a final rule. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA, the USACE, or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

IV. Disposal Site Description

Today's proposed rule is to designate the IOSN for ocean disposal of suitable dredged material. A DEA and draft SMMP have been prepared for the proposed IOSN and are available for review and comment by the public. Copies may be obtained by request from the **FOR FURTHER INFORMATION CONTACT** listed in the introductory section to this proposed rule. Use of the proposed IOSN would be subject to any restrictions included in the site designation and the approved SMMP. These restrictions will be based on a thorough evaluation of the proposed site pursuant to the Ocean Dumping Regulations, potential disposal activity expected at the site, and consideration of public review and comment. Additional restrictions may be placed on any permit or authorization to use the site.

The proposed IOSN is located off the coast southern Maine, New Hampshire, and northern Massachusetts, approximately 10.8 nmi east of Portsmouth, New Hampshire and 5.25 nmi east-northeast of the former IOSH site. This new potential disposal site is currently defined as an 8,500-foot (2590-meter) diameter circle on the seafloor with its center located at 70° 26.995′ W and 43° 1.142′ N. The sediments at the site are predominately soft, fine-grained silts and clays. Water depths at proposed IOSN vary from 255 feet to 340 feet and gradually slope from approximately 295 feet on the western boundary to 328 feet in the southeastern portion of the site. The area is generally flat soft-bottom.

V. Compliance With Statutory and Regulatory Authorities

In proposing to designate the IOSN for the ocean disposal of dredged material from harbors and navigation channels in southern Maine, New Hampshire, and northern Massachusetts, EPA has conducted the dredged material disposal site designation process consistent with the requirements of the MPRSA, NEPA, CZMA, the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and all other applicable legal requirements.

A. Marine Protection, Research, and Sanctuaries Act

Section 102(c) of the MPRSA, 33 U.S.C. 1412(c), gives the Administrator of EPA authority to designate sites where ocean disposal of dredged material may be permitted. *See* also 33 U.S.C. 1413(b) and 40 CFR 228.4(e). The statute places no specific time limit on the term for use of an EPA-designated ocean disposal site. EPA may, however, place various restrictions or limits on the use of a site based on the site's capacity to accommodate dredged material or other environmental concerns. *See* 33 U.S.C. 1412(c). In addition, EPA may, if appropriate, close a previously designated dredged material disposal site. *See* 33 U.S.C. 1412(c)(3)(E). *See also* 40 CFR 228.3(a).

The Ocean Dumping Regulations, *see generally* 40 CFR Subchapter H, prescribe general and specific criteria at 40 CFR 228.5 and 228.6, respectively, to guide EPA's choice of disposal sites for final designation. EPA regulations at 40 CFR 228.4(e)(1) provide, among other things, that EPA will designate any disposal sites by promulgation in 40 CFR part 228. Ocean dumping sites designated on a final basis are promulgated at 40 CFR 228.15. Section 102(c) of the MPRSA, 33 U.S.C. 1412(c), and 40 CFR 228.3 also establish requirements for EPA's ongoing management and monitoring, in conjunction with the USACE, of dredged material disposal sites designated by EPA to ensure that unacceptable, adverse environmental impacts do not occur. Examples of such management and monitoring include the following: Regulating the times, rates, and methods of disposal, as well as the quantities and types of material that may be disposed; conducting pre- and post-disposal monitoring of sites; conducting disposal site evaluation and designation studies; and, if warranted, recommending modification of site use and/or designation conditions and restrictions. *See* also 40 CFR 228.7, 228.8, 228.9.

Finally, a disposal site designation by EPA does not actually authorize any dredged material to be disposed of at that site. It only makes that site available as a possible management option if various other conditions are met first. Use of the site for dredged material disposal must be authorized by the USACE under MPRSA section 103(b), subject to EPA review and concurrence, and such disposal at the site can only be authorized if: (1) It is determined that there is a need for ocean disposal for that project (*i.e.,* that there are no practicable alternatives to such disposal that would cause less harm to the environment); and (2) the dredged material satisfies the applicable environmental impact criteria specified in ocean dumping regulations at 40 CFR part 227. *See* 40 CFR 227.1(b), 227.2, 227.4, 227.5, 227.6 and 227.16. Furthermore, the authorization for disposal also is subject to review for compliance with other applicable legal requirements, which may include the ESA, the MSFCMA, the CWA (including any applicable state water quality standards), NEPA, and the CZMA. The following describes EPA's evaluation of the proposed IOSN alternatives pursuant to the applicable site evaluation criteria, and its compliance with site management and monitoring requirements.

EPA undertook its evaluation of whether to designate any dredged material disposal sites in the southern Maine, New Hampshire, and northern Massachusetts region pursuant to its authority under MPRSA section 102(c) in response to several factors. These factors include the following:

- The determination by EPA, based on the evaluation of projected dredging needs over the 20-year planning horizon and alternatives to open-water disposal conducted for the DEA, that the potential alternatives to open-water disposal do not provide sufficient capacity to accept the quantity of dredged material expected to be generated over the next 20 years in the region;
- Recognition that use of the CADS will cease after December 31, 2021, pursuant to the USACE site selection authority under MPRSA section 103(b) and the closure date for the site as established by Congress under Public Law 115–270, Title I, Sec 1312;
- The understanding that in the absence of an EPA-designated disposal site or sites, any necessary ocean disposal would either be stymied, despite the importance of dredging for ensuring navigational safety and facilitating marine commercial and recreational activities, or the USACE would have to undertake additional short-term ocean disposal site selections under MPRSA section 103 in the future;
- The clear Congressional preference expressed in MPRSA section 103(b) that any ocean disposal of dredged material take place at EPA-designated sites, if feasible; and
- The fact that the two closest EPA-designated ocean disposal sites to this region, the PDS and MBDS, are 42 nmi and 43 nmi respectively from the ZSF dredging center, which would significantly increase transportation costs and project durations, which would likely render some dredging projects infeasible, while also projects that went forward would involve increased energy use, air emissions, and the risk of spills or short-dumps.

EPA's evaluation considered whether there was a need to designate one or more ocean disposal sites for long-term dredged material disposal, including an assessment of whether other dredged material management methods could reasonably be judged to obviate the need for such designations. Having concluded that there was a need for ocean disposal sites, EPA then assessed whether there were sites that would satisfy the applicable environmental criteria to support a site designation under MPRSA section 102(c). The MPRSA and EPA regulations promulgated thereunder address the designation of dredged material disposal sites. The law and regulations specify criteria for use in site evaluations and indicate that a SMMP must be developed for all designated sites. As discussed below, EPA complied with all of these provisions of the statute and regulations in proposing to designate the IOSN.

1. Procedural Requirements

MPRSA sections 102(c) and 103(b) indicate that EPA may designate ocean disposal sites for dredged material. EPA regulations at 40 CFR 228.4(e) specify that dredged material disposal sites will be ''designated by EPA promulgation in this [40 CFR] part 228 . . . .'' EPA regulations at 40 CFR 228.6(b) direct that if an environmental assessment and evaluation is prepared by EPA to assess the proposed designation of one or more disposal sites, it should include the results of an environmental evaluation of the proposed disposal site(s), the environmental assessment should be presented to the public along with a proposed rule for the proposed disposal site designation(s), and that a Final Environmental Assessment should be provided at the time of final rulemaking for the site designation. EPA has complied with all procedural requirements related to the publication of this proposed rule and associated DEA. The Agency has prepared a thorough environmental evaluation of the recommended alternative site being proposed for designation, other alternatives sites, and other courses of action (including the option of not designating open-water disposal sites). This evaluation is presented in the DEA (and related documents) and this proposed rule.

2. Disposal Site Selection Criteria

EPA regulations under the MPRSA identify four general criteria and 11 specific criteria for evaluating locations for the potential designation of dredged material disposal sites. *See* 40 CFR 228.4(e), 228.5 and 228.6. The evaluation of the proposed IOSN with respect to the four general and 11 specific criteria is discussed in detail in the DEA and supporting documents and is summarized below.

General Criteria (40 CFR 228.5)

As described in the DEA, and summarized below, EPA has determined that the proposed IOSN satisfies the four general criteria specified in 40 CFR 228.5. This is discussed in more detail in Chapter 4 of the DEA.

i. Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

EPA's evaluation determined that use of the proposed IOSN would cause minimal interference with the activities identified in the criterion. EPA and USACE used information from a variety of sources to determine what activities might be interfered with by the disposal of dredged material at the proposed IOSN. EPA considered recreational activities, commercial fishing areas, cultural or historically significant areas, commercial and recreational navigation, and existing scientific research activities. EPA and USACE used mapped Geographic Information System (GIS) data to overlay the locations of various uses and natural resources of the marine environment on the disposal site location and surrounding areas (including their bathymetry). Analysis of this data indicated that use of the site would have minimal potential for interfering with other existing or ongoing uses of the marine environment in and around the proposed IOSN, including lobster harvesting or fishing activities. While the site is located in an area where periodic fishing activity occurs, it is not considered a unique fishing ground or highly significant fishery harvest area. Finally, the site is not located in shipping lanes or any other region of heavy commercial or recreational navigation. Furthermore, the site is located in an area where any other vessels could easily navigate around any disposal vessels at or near the site, and the significant water depths at the site mean that material placed there will not interfere with navigation by extending up too high into the water column.

ii. Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

EPA's analysis concludes that the proposed IOSN satisfies this criterion. First, the site will be used only for the disposal of dredged material determined to be suitable for ocean disposal by application of the MPRSA's ocean dumping criteria. *See* 40 CFR part 227. These criteria include provisions related to water quality and account for initial mixing. *See* 40 CFR 227.4, 227.5(d), 227.6(b) and (c), 227.13(c), 227.27, and

227.29. Data evaluated during development of the DEA, indicates that any temporary perturbations in water quality or other environmental conditions at the site during initial mixing from disposal operations will be limited to the immediate area of the site and will neither cause any significant environmental degradation at the site nor reach any beach, shoreline, marine sanctuary, or other important natural resource area. Second, the site is a significant distance from any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

iii. The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA has determined, based on the information presented in the DEA, that the proposed IOSN alternative is sufficiently limited in size to allow for the identification and control of any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. The proposed IOSN covers approximately 2.4 nmi^2 of bottom, which is approximately 0.007% of the bottom surface area of the Gulf of Maine. The long history of dredged material disposal site monitoring in New England, and specifically at active and historic dredged material disposal sites elsewhere in the Gulf of Maine, provides ample evidence that these surveillance and monitoring programs are effective at determining physical, chemical, and biological impacts at sites of the size of the options considered in this case.

The proposed IOSN is identified by specific coordinates spelled out in the DEA, and the use of precision navigation equipment in both dredged material disposal operations and monitoring efforts will enable accurate disposal operations and contribute to effective management and monitoring of the sites. Detailed plans for the management and monitoring of the proposed IOSN are described in the draft SMMP (Appendix G of the DEA). Finally, as discussed herein and in the DEA, EPA has tailored the size of the proposed IOSN based on site characteristics, such as bottom sediment type and bottom features, so that the area and boundaries of the sites are optimized for environmentally sound dredged material disposal operations.

iv. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used (40 CFR 228.5(e)).

EPA has determined that designation of the proposed IOSN is consistent with this criterion. EPA evaluated sites beyond the edge of the continental shelf and historical disposal sites in the Gulf of Maine as part of the alternatives analysis conducted for the DEA. Potential disposal areas located off the continental shelf would be a significant distance offshore, and impracticable for dredging projects from the area under evaluation. The nearest point on the continental shelf/slope boundary to Portsmouth Harbor is more than 230 miles south, about 96 miles southeast of Nantucket. The distance to the slope due east is even greater at about 270 miles. The haul distance to an off-shelf disposal site is therefore much greater than the average operational limit of the southern Maine, New Hampshire, and northern Massachusetts projects, making an off-shelf site infeasible for all projects. Additionally, the cost for evaluation and monitoring and the uncertainty of the environmental effects of off-shelf placement makes that option undesirable. Environmental concerns include increased risk of encountering endangered species during transit, increased fuel consumption and air emissions, and greater potential for accidents in transit that could lead to dredged material being dumped in unintended areas.

USACE dredging and disposal records do not show evidence of dredged material ever having been placed at the area that encompasses the proposed IOSN. The only sites within the ZSF that have been used historically are the former IOSH which, according to USACE files, was used in the 1960s and early 1970s, or at the CADS, a USACE-selected MPRSA Section 103 site located off of Cape Arundel, Maine. However, both the IOSH and the CADS are limited in their capacity to accept new material if they were to be designated and have remaining seafloor areas that are incompatible with dredged material disposal.

Specific Criteria (40 CFR 228.6)

In addition to the four general criteria discussed above, 40 CFR 228.6(a) lists eleven specific factors to be used in evaluating the impact of using the site(s) for dredged material disposal under the MPRSA. Consistency with the eleven specific criteria is discussed below. This is also discussed in more detail in Chapter 4 of the DEA.

i. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1)).

Based on analyses in the DEA, EPA has concluded that the geographical position (*i.e.,* location), water depth, bottom topography (*i.e.,* bathymetry), and distance from coastlines of the proposed IOSN will facilitate containment of dredged material within site boundaries and reduce the likelihood of material being transported away from the site to adjacent seafloor areas. As described in the preceding Disposal Sites Description section and in the above discussion of compliance with general criteria iii and iv (40 CFR 228.5(c) and (d)), the proposed IOSN is located far enough from shore and in deep enough water to avoid adverse impacts to the coastline.

The proposed IOSN is a containment area, so dredged material placed there is expected to stay in the site and not cause adverse effects to adjacent seafloor areas. The closest point of land to the proposed IOSN is Portsmouth, New Hampshire, which is located approximately 10.8 nmi (20 km) to the west. The shoreward edge of the site is approximately nine nmi from the nearest beaches in Rye, NH, and the site is located in waters ranging from 255 to 340 feet deep. As discussed in the DEA, the proposed IOSN is of a sufficient depth to allow the disposal of the amount of material that is projected over the 20-year planning horizon without exceeding any depth threshold. As a result, any short-term impacts from dredged material disposal will be localized and this, together with other regulatory requirements described elsewhere in this document, will facilitate prevention of any adverse impacts at and around the proposed IOSN.

ii. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

EPA considered the proposed IOSN in relation to breeding, spawning, nursery, feeding, and passage areas for adult and juvenile phases (*i.e.,* life stages) of living resources in the Gulf of Maine. From this analysis, EPA concluded that, while disposal of suitable dredged material at the proposed IOSN would cause some short-term, localized effects, overall it would not cause adverse effects to the habitat functions and living resources specified in the above criterion. As previously noted, the proposed IOSN covers approximately 2.4 nmi^2 of bottom, which is approximately 0.007%

of the bottom surface area of the Gulf of Maine.

Generally, there are three primary ways that dredged material disposal could potentially adversely affect marine resources. First, disposal can cause physical impacts by injuring or burying less mobile fish, shellfish, and benthic organisms, as well as their eggs and larvae. Second, tug and barge traffic transporting the dredged material to a disposal site could possibly collide or otherwise interfere with marine mammals and reptiles. Third, contaminants in the dredged material could potentially bioaccumulate through the food chain. However, EPA and the other federal and state agencies that regulate dredging and dredged material disposal have responsibilities and authorities to impose requirements that prevent or greatly limit the potential for these types of impacts to occur.

Dredged material disposal will have some localized impacts to fish, shellfish, and benthic organisms, such as clams and worms, that are present at an ocean disposal site (or in the water column directly above the site) during a disposal event. The sediment plume may entrain and smother some fish in the water column, and may bury some fish, shellfish, and other marine organisms on the sea floor. It also may result in a short-term loss of forage habitat in the immediate disposal area, but recolonization of disposal mounds by benthic infauna within 1–3 years after disposal is expected at the proposed IOSN. As discussed in the DEA (section 7.5.2), over time, disposal mounds recover and develop abundant and diverse biological communities that are healthy and able to support species typically found in the ambient surroundings. Some organisms may burrow deeply into sediments, often up to 20 inches, and are more likely to survive a burial event.

To further reduce potential environmental impacts associated with dredged material disposal, the dredged material from each proposed dredging project will be subjected to the MPRSA sediment testing requirements set forth at 40 CFR part 227 to determine its suitability for ocean disposal. Suitability for ocean disposal is determined by testing the proposed dredged material for toxicity and bioaccumulation and by quantifying the risk to human health that would result from consuming marine organisms that are exposed to the dredged material and its associated contaminants using a risk assessment model. If it is determined that the sediment is unsuitable for ocean disposal—that is, that it may unreasonably degrade or endanger human health or the marine environment—it cannot be disposed at disposal sites designated under the MPRSA. *See* 40 CFR 227.6. Therefore, EPA does not anticipate significant effects on marine organisms from dredged material disposal at the sites under evaluation.

Regarding the potential for impacts to endangered species, EPA is complying with the ESA by consulting with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) concerning EPA's determination that the designation of the proposed IOSN would not likely adversely affect federally-listed species under their respective jurisdictions or any habitat designated as critical for such species. EPA also is coordinating with NMFS under the MSFCMA on potential impacts to essential fish habitat (EFH). Further details on these consultations are provided in the DEA and the sections below describing compliance with the ESA and MSFCMA.

EPA recognizes that dredged material disposal causes some short-term, localized adverse effects to marine organisms in the immediate vicinity of each disposal event. But because dredged material disposal would be limited to suitable material (see above regarding compliance with the general criterion at 40 CFR 228.5(d), EPA concludes that designating proposed IOSN would not cause unacceptable or unreasonable adverse impacts to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. There is no evidence of long-term effects on benthic processes or habitat conditions.

iii. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

EPA's analysis concludes that the proposed IOSN satisfies this criterion. The proposed IOSN is located approximately 10.8 nmi (20 km) east of Portsmouth, New Hampshire. The shoreward edge of the site is approximately nine nautical miles off the nearest beaches in Rye, NH, and is located in waters ranging in depth from 255 to 340 feet. The proposed IOSN is far enough away from beaches, parks, wildlife refuges, and other areas of special concern to prevent adverse impacts to these amenities. Based on information presented in section 6.3 of the DEA, and past monitoring of actual disposal activities, this distance is beyond any expected movement of dredged material due to tidal motion or currents. As noted above, any temporary perturbations in water quality or other environmental conditions at the sites during initial mixing from disposal operations will be limited to the immediate area of the sites and will not reach any beaches, parks, wildlife refuges, or other areas of special concern.

Thus, EPA does not anticipate that the use of the proposed IOSN would cause any adverse impacts to beaches or other amenity areas.

iv. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228.6(a)(4)).

Dredged material subject to the MPRSA is not classified as a waste, and the proposed IOSN is only being considered for the disposal of dredged material; disposal of other types of material will not be allowed. It also should be noted that the disposal of certain other types of material is expressly prohibited by the MPRSA and EPA regulations (*e.g.,* industrial waste, sewage sludge, chemical warfare agents, insufficiently characterized materials) (33 U.S.C. 1414b; 40 CFR 227.5).

Sites that are designated will receive dredged material transported by either government or private contractor hopper dredges or scows. Current hopper dredges or scows available for use have hopper capacities ranging from 800 to 6,000 cubic yards (cy). This would be the likely volume range of dredged material deposited in any one dredging placement cycle.

The volume of dredged material to be removed from federal projects in the southern Maine, New Hampshire, and northern Massachusetts region varies greatly from year to year depending upon need and funding. The majority of the dredged material to be disposed of in the ocean would come from shoals in the channels, anchorages, and turning basins in projects within the study area and would consist primarily of fine-grained marine sediments that have been transported into the projects by tidal currents, riverine deposition, and upland erosion. The fine-grained material undergoes rigorous testing to confirm that the material is suitable for unconfined ocean placement. The proposed site has been sized to accommodate the quantity of material expected to be placed there over the 20-year planning horizon. As previously discussed, dredging in southern Maine, New Hampshire, and northern Massachusetts is projected to generate approximately 1.5 million mcy of dredged material over the next 20 years.

For all these reasons, no significant adverse impacts are expected to be associated with the types and quantities

of dredged material that may be disposed at the sites.

v. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

Monitoring and surveillance are expected to be feasible at the proposed IOSN. Upon designation of a site, monitoring would be conducted according to the most current approved SMMP. As a containment site, the proposed IOSN is conducive to the type of monitoring most commonly conducted at dredged material disposal sites, including side-scan sonar, sediment profile imaging, and sediment grab sampling. The draft SMMP for the proposed IOSN is included as Appendix G of the DEA.

vi. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6)).

The proposed IOSN site meets this criterion. The proposed IOSN is located in federal waters in water depths ranging from approximately 255 to 340 feet. Water circulation in the vicinity of the proposed IOSN is strongly influenced by the counterclockwise flow, or gyre, normally occurring in the Gulf of Maine. The circulation of the Gulf consists of two circular gyres, one counterclockwise within the interior of the Gulf, and the second, clockwise over Georges Bank. Maine coastal waters are included as the western portion of the counterclockwise gyre within the Gulf. Current patterns in the vicinity of the proposed IOSN are typified by coastal-parallel, non-tidal southerly drift currents generated by the overall circulation of the Gulf of Maine.

The fine-grained sediments that dominate the area of the proposed IOSN indicate that the site is in a depositional area. Consequently, any material placed at the proposed site would likely remain within the site and not be significantly affected or transported away from the site by currents.

vii. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7)).

USACE dredging and disposal records do not show evidence of dredged material ever having been disposed of in the area that encompasses the proposed IOSN. Dredged material from within the ZSF was historically disposed of at either the CADS or the former, historically used IOSH, which was used in the 1960s and early 1970s.

In general, results from decades of monitoring of current and historically used ocean disposal sites in the New England region indicate that the disposal of dredged material found suitable for ocean disposal do not significantly alter the long-term functions and values of seafloor bottom as potential habitat for biological communities or contribute to long-term changes in water quality or water circulation at the disposal sites. EPA would expect this also to be the case for the proposed IOSN.

viii. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

In evaluating whether disposal activity at the sites could interfere with shipping, fishing, recreation, mineral extraction, desalination, fish or shellfish culture, areas of scientific importance, and other legitimate uses of the ocean, EPA considered both the effects of placing dredged material on the bottom at the proposed IOSN, and any effects from vessel traffic associated with transporting the dredged material to the disposal site. From this evaluation, EPA concluded there would be no unacceptable or unreasonable adverse effects on the considerations noted in this criterion. Some of the factors listed in this criterion have already been discussed above due to the overlap of this criterion with aspects of certain other criteria. Nevertheless, EPA will address each point below.

EPA does not anticipate conflicts with commercial navigation at the proposed IOSN. The Portsmouth Pilots and the USACE discussed the proposed IOSN disposal site location and its anticipated use with respect to navigation transit impacts (as discussed in more detail in section 4.4.1 of the DEA). Vessels transiting to and from Portsmouth Harbor from the south and southeast follow a route inshore of the Isles of Shoals which will avoid proposed IOSN Vessels approaching or departing to and from the east and northeast (toward Maine and Canada) do cross the general area of the proposed IOSN disposal site. The pilots stated that conflicts between dredge disposal operations and shipping for large and small projects can be avoided, however, by adequate notice to mariners of disposal activities and frequent marine communication between the disposal tugs and the Portsmouth Pilots. Given the open-water conditions around the site and the relatively infrequency of dredged material disposal operations, EPA concludes that any conflicts with vessels traveling in the area of the proposed IOSN should be easily managed in a safe, efficient manner.

EPA also carefully evaluated the potential effects of designating the proposed IOSN on commercial and recreational fishing for both finfish and shellfish (including lobster) and concluded that there would be no unreasonable or unacceptable adverse effects. As discussed above in relation to other site evaluation criteria, dredged material disposal will only have short-term, incidental, and insignificant effects on organisms in the disposal sites and no appreciable effects beyond the sites. Indeed, since past dredged material disposal has been determined to have no significant adverse effects on fishing, the similar projected levels of future disposal activities at the designated site are not expected to have any significant adverse effects.

The four main reasons that EPA concluded that no unacceptable adverse effects would occur from disposal of dredged material at the proposed site are discussed below. First, EPA has concluded that any contaminants in material permitted for ocean disposal—having satisfied the dredged material criteria in the regulations that restrict any toxicity and bioaccumulation—will not cause any significant adverse effects to fish, shellfish, or other aquatic organisms. Because the proposed IOSN is a containment area, dredged material disposed at the site is expected to remain there.

Second, the disposal sites do not encompass any especially important, sensitive, or limited habitat for the Gulf of Maine's fish and shellfish, such as key spawning or nursery habitat for species of finfish. Numerous studies and data reviewed by EPA and the USACE indicate that there is low potential for any future incremental risk from the ocean disposal of dredged sediments at the proposed IOSN, either in the long- or short-term.

Third, while EPA found that a small number of demersal fish (*e.g.,* winter flounder), shellfish (*e.g.,* clams and lobsters), benthic organisms (*e.g.,* worms), and zooplankton and phytoplankton could be lost due to the physical effects of disposal (*e.g.,* burial of organisms on the seafloor by dredged material and entrainment of plankton in the water column by dredged material upon its release from a disposal barge), EPA also determined that these minor, temporary adverse effects would be neither unreasonable nor unacceptable. This determination was based on EPA's conclusion that the numbers of organisms potentially affected represent only a minuscule percentage of those in the Gulf of Maine, and findings from past monitoring in the region consistently show the rapid recovery of the benthic community in an area that has received dredged material.

Fourth, EPA has determined that vessel traffic associated with dredged material disposal will not have any unreasonable or unacceptable adverse effects on fishing. There currently are no mineral extraction activities or desalinization facilities in the Gulf of Maine region with which disposal activity could potentially interfere. No finfish aquaculture currently takes place in the southeastern Gulf of Maine. Finally, the proposed IOSN is not in an area of special scientific importance; in fact, areas with such characteristics were screened out very early in the alternatives screening process. Accordingly, disposing of dredged material at the proposed IOSN will not interfere with any of the activities described in this criterion or other legitimate uses of this part of the Gulf of Maine.

In addition, the designation and use of the proposed IOSN site has been determined by the EPA to be consistent with the Maine, New Hampshire, and Massachusetts coastal zone management programs (Appendix A of the DEA). The Maine, New Hampshire and Massachusetts coastal zone management programs will review this consistency determination and EPA has requested that they provide written notification of their findings.

ix. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9)).

EPA's analysis of existing water quality and ecological conditions at the site, which was based on available data, trend assessments, and baseline surveys, indicates that use of the proposed IOSN will cause no unacceptable or unreasonable adverse environmental effects. Considerations related to water quality and various ecological factors (*e.g.,* sediment quality, benthic organisms, fish and shellfish) have already been discussed above in relation to other site selection criteria and are discussed in detail in the DEA and supporting documents. In considering this criterion, EPA considered existing water quality and sediment quality data collected in the Gulf of Maine, including from the USACE's Disposal Area Monitoring System (DAMOS), as well as water quality data from EPA's coastal nutrient criteria and trend monitoring efforts. As discussed herein, EPA has determined that disposal of suitable dredged material at the proposed IOSN should not cause any significant adverse environmental effects to water quality or to ecological conditions at the site. EPA and the USACE have prepared a draft SMMP for the proposed IOSN to guide future monitoring of site conditions (Appendix G of the DEA).

x. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites (40 CFR 228.6(a)(10)).

Monitoring at disposal sites elsewhere in the Gulf of Maine over the past 35 years has shown no recruitment of nuisance (invasive, non-native) species and no such adverse effects are expected to occur at the proposed IOSN in the future. EPA and the USACE will continue to monitor EPA-designated sites in the Gulf of Maine under their respective SMMPs, which include a ''management focus'' on ''changes in composition and numbers of pelagic, demersal, or benthic biota at or near the disposal sites'' (SMMP, Appendix G of the DEA).

In addition, source materials from projects in southern Maine, New Hampshire, and northern Massachusetts to be dredged and transported to the disposal site historically have been classified as marine silts and clays, which are similar to the sediments found at the proposed IOSN site. Any material proposed for ocean disposal at the proposed IOSN site would be subject to sediment quality evaluation. Therefore, it is highly unlikely that any nuisance species could be established at the proposed disposal site since habitat (*i.e.,* sediment type) or contaminant levels are unlikely to change over the long-term use of the site.

xi. Existence at or in Close Proximity to the Sites of Any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

There are no natural features of historical importance in the proposed IOSN, and the cultural resources that have the greatest potential for being impacted in this area are shipwrecks. Jeffery's Ledge, located to the east of the proposed IOSN, is an important feeding ground for humpback whales and right whales in the summer and fall months and serves as a prime recreational whale watching area. No impacts to this area are expected based on disposal of suitable dredged material at the proposed IOSN. Procedures outlined in the draft SMMP (Appendix G of the DEA) will be followed to further protect this feature.

As discussed in section 6.7 of the DEA, sidescan sonar of the proposed IOSN was conducted and no potential shipwrecks or other cultural feature were noted. The cultural resource literature search conducted for the proposed IOSN area did not identify any shipwrecks in the vicinity. While undiscovered shipwrecks could occur in the area, it is unlikely based on the results of the sidescan survey of the area. Based on this information, it is unlikely that any significant cultural resources will be affected from the designation and use of the disposal site.

3. Disposal Site Management (40 CFR 228.3, 228.7, 228.8 and 228.9)

The proposed IOSN would be subject to specific management requirements to ensure that unacceptable adverse environmental impacts do not occur. Examples of these requirements include: (1) Restricting use of the sites to the disposal of dredged material that has been determined to be suitable for ocean disposal under the requirements of the MPRSA; (2) monitoring the disposal site and associated reference site, the latter of which is not used for dredged material disposal, to assess potential impacts to the marine environment by providing a point of comparison to an area unaffected by dredged material disposal; and (3) retaining the right to limit or close these sites to further disposal activity if monitoring or other information reveals evidence of unacceptable adverse impacts to the marine environment. As mentioned above, dredged material disposal will not be allowed when weather and sea conditions could interfere with safe, effective placement of any dredged material at a designated site.

In accordance with the requirements of MPRSA section 102(c) and 40 CFR 228.3, EPA and the USACE have developed a draft SMMP for the proposed IOSN.

B. National Environmental Policy Act

The NEPA, 42 U.S.C. 4321 *et seq.,* requires the public analysis of the potential environmental effects of proposed federal agency actions and reasonable alternative courses of action to ensure that these effects, and the differences in effects among the different alternatives, are understood. The goal of this analysis is to ensure high quality, informed, and transparent decision-making, to facilitate avoiding or minimizing any adverse effects of proposed actions, and to help restore and enhance environmental quality. *See* 40 CFR 6.100(a) and 1500.1(c) and 1500.2(d) through (f). NEPA requires public involvement throughout the decision-making process. *See* 40 CFR 6.400(a) and 40 CFR 1503 and 1501.7, 1506.6.

EPA disposal site designation evaluations conducted under the MPRSA have been determined to be ''functionally equivalent'' to NEPA reviews, so that they are not subject to NEPA analysis requirements as a matter of law. Nevertheless, as a matter of

policy, EPA voluntarily uses NEPA procedures when evaluating the potential designation of ocean dumping sites. *See* 63 FR 58045 (Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act Documents, October 29, 1998). While EPA voluntarily uses NEPA review procedures in conducting MPRSA disposal site designation evaluations, EPA also has explained that ''[t]he voluntary preparation of these documents in no way legally subjects the Agency to NEPA's requirements'' (63 FR 58046).

In this case, EPA and the USACE prepared a ''Draft Environmental Assessment and Evaluation Study for Designation of an Ocean Dredged Material Disposal Site to serve the Southern Maine, New Hampshire, and Northern Massachusetts Region'' (DEA). If EPA decides to proceed with this proposed action after full consideration of public comments, the Agency will publish a final rule for the site designation. In addition, EPA will also publish a Responses to Comments document in conjunction with publication of a Final Environmental Assessment (FEA). The Responses to Comments will identify and respond to comments received on the DEA and proposed rule. If, after full consideration of public comments, EPA and the USACE determine that the designation of the proposed IOSN will not have significant environmental impacts, the EPA and the USACE will issue a Finding of No Significant Impact (FONSI). A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action.

If the FEA determines that the environmental impacts of the proposed IOSN designation will be significant, an Environmental Impact Statement will be prepared.

1. Cooperating Agencies

The USACE was a ''cooperating agency'' in the development of the DEA because of its knowledge concerning the region's dredging needs, its technical expertise in monitoring dredged material disposal sites and assessing the environmental effects of dredging and dredged material disposal, its history in the regulation of dredged material disposal in the Gulf of Maine and elsewhere, and its ongoing legal role in regulating dredging, dredged material disposal, and the management and monitoring of disposal sites. To take advantage of expertise held by other entities, and to promote strong inter-agency communications, EPA also consulted and/or coordinated with the USFWS; the NMFS; the Maine Department of Environmental Protection; the Maine Department of Marine Resources; the Maine Geological Service; the Maine SHPO; the New Hampshire Department of Environmental Services; the New Hampshire Department of Fish and Game; and the Massachusetts Office of Coastal Zone Management.

Throughout the DEA development process, EPA communicated with the cooperating federal and state agencies to keep them apprised of progress on the project and to solicit input. EPA conducted two interagency meetings between May 2016 and December 2018 to solicit data sources and concerns, to review progress, and to receive feedback on the proposed action. EPA also was in regular contact with representatives of these agencies throughout the DEA development process via multiple state and regional dredging taskforce team meetings.

2. Public Participation

Consistent with the public participation provisions of the NEPA regulations, EPA is conducting a public review process by the release of this proposed rule and the DEA for public comment. Comments received as a result of the public review process will be considered, addressed, and documented in detail in an appendix of the Final Environmental Assessment.

3. Zone of Siting Feasibility

As one of the first steps in the DEA process, EPA, in cooperation with other federal and state agencies, delineated a ZSF. The ZSF is the geographic area from which reasonable and practicable open-water dredged material disposal site alternatives should be selected for evaluation. EPA's 1986 site designation guidance manual describes the factors that should be considered in delineating the ZSF and recommends locating open-water disposal sites within an economically and operationally feasible radius from areas where dredging occurs. Other factors to be considered include navigational restrictions, political or other jurisdictional boundaries, the distance to the edge of the continental shelf, the feasibility of surveillance and monitoring, and operation and transportation costs. The ZSF analyzed in this DEA includes the coastal waters of the southern Maine, New Hampshire, and northern Massachusetts region between Cape Porpoise, Maine and Cape Ann, Massachusetts. These boundaries were chosen as they are the limits of equidistant points on the coast to either the PDS to the north off Cape Elizabeth, Maine, or the MBDS to the south off Boston Harbor, Massachusetts. The PDS and the MBDS are the nearest EPA-designated ocean disposal sites in the region and are located about 85.5 miles apart.

4. Draft Environmental Assessment and Evaluation Study

The DEA evaluates whether an ODMDS should be designated to serve the southern Maine, New Hampshire, and southern Maine coastal region. The DEA describes the purpose and need for any such designation, and evaluates several alternatives to this action, including the option of ''no action'' (*i.e.,* no designation). Based on this evaluation, EPA concludes that designation of the proposed IOSN under the MPRSA is the preferred alternative.

As stated in the Purpose and Need section, the purpose of this designation is to provide a long-term, open-water dredged material disposal site as a potential option for the future disposal of such material. The action is necessary because periodic dredging and dredged material disposal is unavoidably necessary to maintain safe navigation and marine commerce in ports and harbors in the southern Maine, New Hampshire, and northern Massachusetts coastal region. As previously noted, dredging in southern Maine, New Hampshire, and northern Massachusetts is projected to generate approximately 1.5 mcy of dredged material over the next 20 years.

EPA evaluated potential alternatives to open-water disposal in the southern Maine, New Hampshire, and northern Massachusetts coastal region but determined that none were sufficient to meet the projected regional dredging needs. In accordance with EPA regulations, use of alternatives to ocean disposal will be required for dredged material management when they provide a practicable, environmentally preferable option for the dredged material from any particular disposal project. *See* 40 CFR 227.16. When no such practicable alternatives exist, however, EPA's designation of the proposed IOSN will provide an ocean disposal site as a potential management option for dredged material regulated under the MPRSA that has been tested and determined to be environmentally suitable for ocean disposal. Sediments found to be unsuitable for ocean disposal will not be authorized for placement at a disposal site designated by EPA under the MPRSA and will have to be managed in other ways.

EPA's initial screening of alternatives, which involved input from other federal and state agencies led to the determination that the ocean disposal sites were the most environmentally sound, cost-effective, and operationally feasible options for the full quantity of dredged material expected to be found suitable for ocean disposal over the 20-year planning horizon. Regardless of this conclusion, in practice, each individual dredging project will be analyzed on a case-specific basis and ocean disposal of dredged material at a designated site would only be authorized when there is a need for such disposal (*i.e.,* there are no practicable, environmentally preferable alternatives). *See* 40 CFR 227.2(a)(1), 227.16(b). EPA analyzed alternatives for the management of dredged material from navigation channels and harbors in the southern Maine, New Hampshire, and northern Massachusetts coastal region. This analysis evaluated several different potential alternatives, including ocean disposal sites, upland disposal, beneficial uses, sediment treatment, and the no-action alternative. From this analysis, EPA determined that at least one ocean disposal site, such as the proposed IOSN, was necessary to provide sufficient capacity to meet the long-term dredged material disposal needs of the region in the event that practicable alternatives to ocean disposal are not available for all the material.

C. Coastal Zone Management Act

The CZMA, 16 U.S.C. 1451, *et seq.,* authorizes states to establish coastal zone management programs to develop and enforce policies to protect their coastal resources and promote uses of those resources that are desired by the state. These coastal zone management programs must be approved by the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), which is responsible for administering the CZMA. Sections 307(c)(1)(A) and (C) of the CZMA require federal agencies to provide relevant states with a determination that each federal agency activity, whether taking place within or outside the coastal zone, that affects any land or water use or natural resource of the state's coastal zone, will be carried out in a manner consistent to the maximum extent practicable with the enforceable policies of the state's approved coastal zone management program. EPA's compliance with the CZMA is described below.

Based on the evaluations presented in the DEA and supporting documents, and a review of the federally approved Maine, Massachusetts, and New Hampshire coastal zone programs and policies, EPA has determined that designation of the proposed IOSN for ocean dredged material disposal under the MPRSA would be fully consistent or consistent to the maximum extent practicable with the enforceable policies of the coastal zone management programs of Maine, Massachusetts, and New Hampshire. EPA will provide a written determination to that effect to each of the three states within the statutory and regulatory mandated timeframes.

In EPA's view, there are several broad reasons why the proposed designation of the IOSN would be consistent with the applicable, enforceable policies of the states' coastal zone programs. First, the designation is not expected to cause any significant adverse impacts to the marine environment, coastal resources, or uses of the coastal zone. Indeed, EPA expects the designation to benefit uses involving navigation and berthing of vessels by facilitating needed dredging, and to benefit the environment by concentrating any open-water dredged material disposal at a single, environmentally appropriate site designated by EPA and subject to the previously described SMMP, rather than at a potential proliferation of USACE-selected disposal sites. Second, designation of the site does not actually authorize the disposal of any dredged material at the site, since any proposal to dispose dredged material from a particular project at a designated site will be subject to case-specific evaluation and be allowed only if: (a) The material satisfies the requirements of the MPRSA and Ocean Dumping Regulations; and (b) no practicable alternative method of management with less adverse environmental impact can be identified. Third, the designated disposal site will be managed and monitored pursuant to a SMMP and if adverse impacts are identified, use of the site will be modified to reduce or eliminate those impacts. Such modification could further restrict, or even terminate, use of the site, if appropriate. *See* 40 CFR 228.3, 228.11.

D. Endangered Species Act

Under section 7(a)(2) of the ESA, 16 U.S.C. 1536(a)(2), federal agencies are required to ensure that their actions are ''not likely to jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of habitat of such species, which is determined to be critical.'' Depending on the species involved, a federal agency is required to consult with the NMFS and/or USFWS if the agency's action ''may affect'' an endangered or threatened species or its critical habitat (50 CFR 402.14(a)). Thus, the ESA requires consultation with NMFS and/or USFWS to adequately address potential impacts to threatened and endangered species that may occur at the proposed dredged material disposal site from any proposal to dispose of dredged material.

To comply with the ESA, EPA has coordinated with NMFS and USFWS and will request consultation concurrent with the release of the DEA. EPA has determined that the designation of a disposal site will not result in adverse impacts to threatened or endangered species, species of concern, marine protected areas, or essential fish habitat. In addition, the USACE would coordinate with the NMFS and USFWS for individual permitted projects to further ensure that impacts would not adversely impact any threatened or endangered species.

E. Magnuson-Stevens Fishery Conservation and Management Act

The MSFCMA, 16 U.S.C. 1801 *et seq.,* requires the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. The goal of these provisions is to ensure that EFH is not adversely impacted by fishing or other human activities, including dredged material disposal, and to further the enhancement of these habitats, thereby protecting both ecosystem health and the fisheries industries. Pursuant to section 305(b)(2) of the MSFCMA, federal agencies are required to consult with NMFS regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as, ''[a]ny impact which reduces the quality and/or quantity of EFH [and] may include direct (*e.g.,* contamination or physical disruption), indirect (*e.g.,* loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions'' (50 CFR 600.810(a)).

EPA is coordinating with NMFS to ensure compliance with the EFH provisions of the MSFCMA and has prepared an essential fish habitat assessment in compliance with the Act. EPA will incorporate any conservation recommendations from NMFS or explain why it has not done so in its final action.

VI. Restrictions

Disposal shall be limited to dredged material suitable for ocean disposal.

VII. Proposed Action

EPA is proposing this rule to designate the IOSN for the purpose of providing an environmentally sound, ocean disposal option for possible use in managing dredged material from harbors and navigation channels in the southern Maine, New Hampshire, and northern Massachusetts coastal region. Without this ocean dredged material disposal site designation, there will not be a cost-effective ocean disposal site available to serve this region after December 31, 2021, when the current Congressionally-authorized term of use for the CADS expires. In developing the DEA, described previously in several sections, the USACE and EPA conducted a ''dredging needs'' assessment that estimated that a total volume of 1.5 mcy of dredged material that would come from southern Maine, New Hampshire, and northern Massachusetts over the 20-year planning horizon.

The site designation process has been conducted consistent with the requirements of the MPRSA, NEPA, CZMA, and other applicable federal and state statutes and regulations. The basis for this federal action is further described in the DEA that identifies EPA designation of the proposed IOSN as the preferred alternative. The DEA also is being released for public comment in conjunction with the publication of this proposed rule. Upon completion of the public comment period and EPA's consideration of all comments received, EPA will publish a Responses to Comments document in conjunction with publication of a FEA and final rule. The Responses to Comments will identify and respond to comments received on the DEA and proposed rule. If, after full consideration of public comments, EPA and the USACE determine that the designation of the proposed IOSN will not have significant environmental impacts, the EPA and the USACE will issue a FONSI with the FEA. A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action.

If the FEA determines that the environmental impacts of the proposed IOSN designation will be significant, an Environmental Impact Statement will be prepared.

If designated, the proposed IOSN is subject to management and monitoring protocols to prevent the occurrence of unacceptable adverse environmental impacts. These protocols are spelled out in a draft SMMP for the site. The SMMP is included as Appendix G to the DEA. Under 40 CFR 228.3(b), the Regional Administrator of EPA Region 1 is responsible for the overall management of this site. As previously explained, the designation of a disposal site does not constitute or imply EPA's approval of ocean disposal at that site of dredged material from any specific project. Disposal of dredged material will not be allowed at the proposed IOSN until the proposed disposal operation first receives proper authorization from the USACE under MPRSA section 103. All MPRSA permits and federal projects involving ocean disposal of dredged material are subject to EPA review and concurrence under MPRSA section 103(c). EPA may concur (with or without conditions) or decline to concur on the MPRSA permit/authorization) in accordance with MPRSA section 103(c). If EPA concurs with conditions, the final permit/authorization must include those conditions. If EPA declines to concur (*i.e.,* non-concurs), the USACE cannot issue the permit/authorize itself to implement the MPRSA directly in USACE project involving ocean dumping. In order to properly obtain authorization to dispose of dredged material at the proposed IOSN disposal site under the MPRSA, the dredged material proposed for disposal must first satisfy the applicable criteria for testing and evaluating dredged material specified in EPA regulations at 40 CFR part 227, and it must be determined in accordance with EPA regulations at 40 CFR part 227, subpart C, that there is a need for ocean disposal (*i.e.,* that there is no practicable dredged material management alternative to ocean disposal with less adverse environmental impact).

VIII. Supporting Documents

1. *EPA Region 1/USACE NAE. 2019. Draft Environmental Assessment and Evaluation Study for Designation of an Ocean Dredged Material Disposal Site for the Southern Maine, New Hampshire, and Northern Massachusetts Coastal Region. U.S. Environmental Protection Agency, Region 1, Boston, MA and U.S. Army Corps of Engineers, New England District, Concord, MA. August 2019.*
2. *EPA Region 1/USACE NAE. 2004. Regional Implementation Manual for the Evaluation of Dredged Material Proposed for Disposal in New England Waters. U.S. Environmental Protection Agency, Region 1, Boston, MA, and U.S. Army Corps of Engineers, New England District, Concord, MA. April 2004. EPA/USACE. 1991.*
3. *Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual. U.S. Environmental Protection Agency, Washington, DC, and U.S. Army Corps of Engineers, Washington, DC. EPA—503/8–91/001. February 1991.*

IX. Statutory and Executive Order Reviews

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

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

2. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a federal agency.

3. Regulatory Flexibility Act (RFA)

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). Rather, this action would provide a cost-effective, environmentally acceptable alternative for the disposal of dredged material for many small marina and boat yard operators in the region.

4. 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.

5. 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 federal government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 because the proposed restrictions will not have substantial direct effects on Indian tribes, on the relationship between the federal

government and Indian Tribes, or the distribution of power and responsibilities between the federal government and Indian Tribes. EPA consulted with the potentially affected Indian tribes in making this determination.

7. 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 environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

8. 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.

9. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have a disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

11. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to ''expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.'' EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means, ''those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.''

The EPA expects that this proposed rule will have no significant adverse impacts on the ocean and coastal waters off southern Maine, New Hampshire, and northern Massachusetts or the organisms that inhabit them.

12. Executive Order 13840: Regarding the Ocean Policy To Advance the Economic, Security, and Environmental Interests of the United States

The policies in section 2 of Executive Order 13840 (83 FR 29341, June 19, 2019) include, among others, the following: ''It shall be the policy of the United States to: (a) Coordinate the activities of executive departments and agencies (agencies) regarding ocean-related matters to ensure effective management of ocean, coastal, and Great Lakes waters and to provide economic, security, and environmental benefits for present and future generations; [. . . and] (d) facilitate the economic growth of coastal communities and promote ocean industries, which employ millions of Americans, advance ocean science and technology, feed the American people, transport American goods, expand recreational opportunities, and enhance America's energy security. . . .'' EPA, in developing this proposed rule, coordinated extensively with other federal and state agencies, and potentially affected stakeholders, to ensure effective management of dredging and dredged material by providing a cost-effective, environmentally acceptable alternative for the disposal of such material. The availability of such an ocean disposal site supports the economic growth of coastal communities and ocean industries, which will be able to maintain safe and efficient navigation through the ports and channels in a cost-effective manner.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: August 29, 2019.

Deborah A. Szaro,

Acting Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. In § 228.15 add paragraph (b)(7) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

(b) * * *

(7) Isles of Shoals North Dredged Material Disposal Site (IOSN).

(i) *Location:* A 8,500-foot (2590-meter) diameter circle on the seafloor with its center located at 70° 26.995′ W and 43° 1.142′ N.

(ii) *Size:* 1,311 acres (57,142,000 square feet).

(iii) *Depth:* Ranges from 255 to 340 feet (78 to 104 m).

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* Limited to disposal of dredged material suitable for ocean disposal.

[FR Doc. 2019–20127 Filed 9–17–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 84, No. 181

Wednesday, September 18, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota 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 planning meeting of the South Dakota Advisory Committee to the Commission will convene at 3:00 p.m. (CDT) on Tuesday, October 8, 2019 via teleconference. The purpose of the meeting is to review project proposals and vote on civil rights topic to examine.

DATES: Tuesday, October 8, 2019, at 3:00 p.m. (CDT).

ADDRESSES: To be held via teleconference: 1–800–367–2403, Conference ID: 5955938. TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, *ebohor@usccr.gov,* 303–866–1040.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–800–367–2403; Conference ID: 5955938. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. 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 phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–877–8339 and provide the FRS operator with Conference Call Toll-Free Number: 1–800–367–2403; Conference ID: 5955938. Members of the public are invited to submit written comments; the comments must be received in the regional office by Thursday, August 22, 2019. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzm5AAA* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain 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 Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda: Tuesday, October 8, 2019 (3:00 p.m.—CDT)

- Roll-call
- Review and discussion on project proposals
- Vote on project topic
- Public Comment
- Adjourn

Dated: September 12, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–20160 Filed 9–17–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 planning meeting of the Rhode Island State Advisory Committee to the Commission will convene by conference call, on Tuesday, September 24, 2019 at 11:00 a.m. (EDT). The purpose of the meeting is to review and vote on the hate crimes advisory memorandum and get an update on the licensing project.

DATES: Tuesday, September 24, 2019 at 11:00 a.m. (EDT).

ADDRESSES: Public Call-In Information: Conference call number: 1–800–353–6461 and conference call ID: 1961994.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, 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: 1–800–353–6461 and conference call ID: 1961994. 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:1–800–353–6461 and conference call ID: 1961994.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each 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 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/apex/FACAPublicCommittee?id=a10t0000001gzm4AAA;* 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.

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.

Agenda: Tuesday, September 24, 2019 at 11:00 a.m. (EDT).

I. Roll Call
II. Review and Vote on Hate Crimes Advisory Memorandum
III. Update on Licensing Project
IV. Open Comment
V. Adjournment

Dated: September 12, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–20161 Filed 9–17–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 planning meeting of the North Dakota Advisory Committee to the Commission will by teleconference at 2:00 p.m. (CDT) on Wednesday, September 25, 2019. The purpose of the meeting is to review and vote on their hate crimes memorandum and to consider the possibility of an interim housing project.

DATES: Wednesday, September 25, 2019, at 2:00 p.m. CDT.

ADDRESSES: Public Call-In Information: Conference call-in number: 1–800–367–2403 and conference call 9659011.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ebohor@usccr.gov* or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–367–2403 and conference call 9659011. Please be advised that before placing them 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 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–800–367–2403 and conference call 9659011.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1040, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzl9AAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain 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 Rocky Mountain Regional Office at the above phone numbers, email or street address.

Agenda: Wednesday, September 25, 2019, 2:00 p.m. (CDT)

- Roll call
- Vote on ND SAC Hate Crimes Memorandum
- Discuss Possibility of Interim Housing Project
- Open Comment
- 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: September 12, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–20159 Filed 9–17–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 190912–0026]

RIN 0694–XC055

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of the Proposed Amendment to Fiscal Year 2020 Annual Materials Plan and the Proposed Fiscal Year 2021 Annual Materials Plan

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: The purpose of this notice is to request public comments on the potential market impact of a proposed amendment to the Fiscal Year 2020 National Defense Stockpile Annual Materials Plan (AMP) and the proposed Fiscal Year 2021 National Defense Stockpile AMP. Changes to the AMP are discussed and decided by the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State. The role of the Market Impact Committee is to advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions, conversions, and disposals involving the stockpile and related material research and development projects. Public comments are an important element of the Committee's market impact review process.

DATES: To be considered, written comments must be received by October 18, 2019.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2019–0024. All relevant comments

(including any personally identifying information) will be made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Parya Fenton, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: (202) 482–8228, fax: (202) 482–5650 (Attn: Parya Fenton), email: *MIC@bis.doc.gov.* All questions submitted through email must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Revision Act of 1979, as amended (the Stock Piling Act) (50 U.S.C. 98 *et seq.*), the Department of Defense's Defense Logistics Agency (DLA), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 9(b)(2)(G)(ii) of the Stock Piling Act (50 U.S.C. 98h(b)(2)(H)(ii)) authorizes the National Defense Stockpile Manager to fund material research and development projects to develop new materials for the stockpile.

Section 3314 of the National Defense Authorization Act for Fiscal Year 1993 (FY 1993 NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile . . .'' The Committee must also balance market impact concerns with the statutory requirement to protect the U.S. Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the materials stored in or of interest to the National Defense Stockpile Manager.

As the National Defense Stockpile Manager, the DLA must produce an Annual Materials Plan (AMP) proposing the maximum quantity of each listed material that may be acquired, disposed of, upgraded, converted, recovered, or sold by the DLA in a particular fiscal year. In Attachment 1, the DLA lists the quantities of three materials it wishes to acquire for the National Defense Stockpile that were not included in the previously approved Fiscal Year (FY) 2020 AMP. Attachment 1 also lists three materials the DLA is targeting for disposals from the National Defense Stockpile that were likewise not included in the previously approved FY 2020 AMP. The quantities listed for potential disposal in Attachment 1 are not disposal or sales target quantities, but rather a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year by the DLA as noted. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress. The DLA is seeking this amendment to the FY 2020 AMP to respond to changing market and other conditions that were not foreseen when the AMP was first submitted.

In Attachment 2, the DLA lists the quantities and types of activity (potential disposals, potential acquisitions, potential conversions (upgrade, rotation, reprocessing, etc.) or potential recovery from government sources) associated with each material in its proposed FY 2021AMP. The quantities listed in Attachment 2 are not acquisition, disposal, upgrade, conversion, recovery, reprocessing, or sales target quantities, but rather a statement of the proposed maximum quantity of each listed material that may be acquired, disposed of, upgraded, converted, recovered, or sold in a particular fiscal year by the DLA, as noted. The quantity of each material that will actually be acquired or offered for sale will depend on the market for the material at the time of the acquisition or offering, as well as on the quantity of each material approved for acquisition, disposal, conversion (upgrade, rotation, reprocessing, etc.), or recovery by Congress.

The Committee is seeking public comments on the potential market impact associated with the proposed amendment to the FY 2020 AMP and proposed FY 2021 AMP as enumerated in the Attachments. Public comments are an important element of the Committee's market impact review process.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the quantities associated with the proposed amendment to the FY 2020 AMP and the proposed FY 2021 AMP. All comments must be submitted to BIS as described in the **ADDRESSES** section of this notice. Commenters should indicate whether their comment is related to the proposed amendment to the FY 2020 AMP or the proposed FY 2021 AMP.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on October 18, 2019. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

Dated: September 12, 2019.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

ATTACHMENT 1—PROPOSED AMENDMENT TO FISCAL YEAR 2020 ANNUAL MATERIALS PLAN

Material	Unit	Quantity
Proposed Acquisitions		
Neodymium	MT	40
Rare Earth Magnet Block	MT	18.5
Praseodymium	MT	14

ATTACHMENT 1—PROPOSED AMENDMENT TO FISCAL YEAR 2020 ANNUAL MATERIALS PLAN—Continued

Material	Unit	Quantity
Proposed Disposals		
Cobalt	Lbs	666,792
Quartz Crystals	Lbs	15,759
Tin	MT	804

ATTACHMENT 2—PROPOSED FISCAL YEAR 2021 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Potential Disposals			
Beryllium Metal	ST	8	
Chromium, Ferro	ST	24,000	
Chromium, Metal	ST	500	
Germanium Scrap	kg	3,000	
Manganese, Ferro	ST	50,000	
Manganese, Metallurgical Grade	SDT	322,025	
Aerospace Alloys	Lbs	1,500,000	
Platinum	Tr Oz	8,380	
PGM—Iridium	Tr Oz	489	
Quartz Crystals	Lbs	15,759	
Tantalum Carbide Powder	Lb Ta	3,777	
Tantalum Scrap	Lbs	190	
Tin	MT	4,034	
Titanium Based Alloys	Lbs	600,000	
Tungsten Metal Powder	LB W	275,741	
Tungsten Ores and Concentrates	LB W	3,000,000	
Zinc	ST	7,993	
Potential Acquisitions			
Antimony	MT	1,100	
Boron Carbide	MT	1,000	
High Modulus High Strength Carbon Fibers	MT	72	
Carbon Fibers	Lbs	5,000	
Cerium	MT	500	
Dysprosium	MT	20	
Electrolytic Manganese Metal	MT	5,000	
Lanthanum	MT	1,300	
Neodymium	MT	600	
Praseodymium	MT	70	
Rare Earth Magnet Block	MT	100	
Rayon	MT	600	
RDX/HMX/IMX/TNT	Lbs	7,000,000	
Samarium Cobalt Alloy	MT	50	
Silicon Carbide Fibers	Lbs	875	
Tantalum	Lb Ta	33,990	
Tungsten Rhenium Metal	kg	5,000	
Yttrium	MT	600	
Potential Conversions (Upgrade, Rotation, Reprocessing, etc.)			
Beryllium Metal	ST	8	
CZT (Cadmium Zinc Tellurium substrates)	cm^2	32,000	
High Modulus High Strength Carbon Fibers	MT	72	
Europium	MT	35	
Germanium (Scrap)	kg	5,000	
Iridium Catalyst	Lbs	50	
Lithium Ion Materials	MT	25	
Rare Earths Elements	MT	12	
Silicon Carbide Fibers	Lbs	875	
Tin	MT	804	
Potential Recovery From Government sources			
Bearing Steel	MT	50	
E-Waste	MT	50	(1)
Gadolinium Oxide	MT	4	

ATTACHMENT 2—PROPOSED FISCAL YEAR 2021 ANNUAL MATERIALS PLAN—Continued

Material	Unit	Quantity	Footnote
Germanium (Scrap)	kg	5,000	
Iridium Catalyst (Scrap)	Lbs	50	
Lithium Ion Materials	MT	25	
Magnesium Metal	MT	25	
Rhenium Metal	kg	500	
Aerospace Alloys	Lbs	1,500,000	
Tantalum	MT	10	
Yttrium Aluminum Garnet Rods (Scrap)	kg	250	
Zirconia Oxide	MT	4	

Footnote Key:
[1] Strategic and Critical Materials collected from E-Waste (Strategic Materials collected from electronics waste).

[FR Doc. 2019–20200 Filed 9–17–19; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding, in part, the administrative review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules from the People's Republic of China (China) for the period of review (POR) December 1, 2017, through November 30, 2018.

DATES: Applicable September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, the Department of Commerce (Commerce) published in the **Federal Register** the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from China.[1] On December 3, 2018, Commerce published a notice of opportunity to request an administrative review of the Order.[2] Commerce received multiple timely requests for an administrative review of the Order. On March 14, 2019, in accordance with section 751(a) of Tariff Act of 1930, as amended (the Act), Commerce published in the **Federal Register** a notice of the initiation of an administrative review of the Order.[3] The administrative review was initiated with respect to 54 companies or groups of companies, and covers the period from December 1, 2017, through November 30, 2018. Requesting parties have subsequently timely withdrawn all review requests for 14 companies or groups of companies for which Commerce initiated a review, as discussed below.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. All requesting parties withdrew their respective requests for an administrative review of the 14 companies or groups of companies listed in the Appendix within 90 days of the date of publication of *Initiation Notice.* Accordingly, Commerce is rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1).[4]

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed on the subject merchandise at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012) (Order).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 62293 (December 3, 2018).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019) (*Initiation Notice*).

[4] *See* Appendix. As stated in *Change in Practice in NME Reviews,* Commerce will no longer consider the non-market economy (NME) entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013). The China-wide entity is not subject to this administrative review because no interested party requested a review of the entity. *See Initiation Notice.*

requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 12, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

- Canadian Solar (USA) Inc.
- Canadian Solar Inc.
- Chint Solar (Zhejiang) Co., Ltd.
- ET Solar Industry Limited
- Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.
- Jiangsu Sunlink PV Technology Co., Ltd.
- JinkoSolar (U.S.) Inc.
- Nice Sun PV Co., Ltd.
- Shenzhen Topray Solar Co., Ltd.
- Sunpreme Inc.
- Xiamen Eco-sources Technology Co., Ltd.
- Yingli Green Energy Holding Company Limited
- Yingli Green Energy International Trading Company Limited
- Taizhou BD Trade Co., Ltd.

[FR Doc. 2019–20178 Filed 9–17–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–059]

Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty order on cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the People's Republic of China (China) for the period September 25, 2017, through December 31, 2018, based on the timely withdrawals of the requests for review.

DATES: Applicable September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Shanah Lee, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230; telephone: (202) 482–6386.

Background

On February 8, 2019, Commerce published a notice of opportunity to request an administrative review of the countervailing duty order on cold-drawn mechanical tubing from China for the period September 25, 2017, through December 31, 2018.[1] On February 28, 2019, Howmet Corp Logistics Services (Howmet), a U.S. importer, timely filed a request to conduct an administrative review of Wuxi P&C Machinery Co., Ltd. (Wuxi P&C).[2] Also, on February 28, 2019, ArcelorMittal Tubular Products LLC and Webco Industries, Inc. (the petitioners) timely filed a request to conduct an administrative review of 18 companies, including Wuxi P&C.[3] Based on these requests, on May 2, 2019, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published in the **Federal Register** a notice of initiation of administrative review covering the period September 25, 2017, through December 31, 2018 for 18 companies.[4] On June 28, 2019, the petitioners submitted a request to withdraw their request for administrative review with respect to all companies for which a review was requested.[5] On July 31, 2019, Howmet submitted a request to withdraw its request for administrative review with respect to Wuxi P&C.[6]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, Howmet and the petitioners withdrew their requests by the 90-day deadline. Accordingly, we are rescinding the administrative review of the countervailing duty order on cold-drawn mechanical tubing from China covering September 25, 2017, through December 31, 2018, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of cold-drawn mechanical tubing from China. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in according with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 12, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–20179 Filed 9–17–19; 8:45 am]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 2816 (February 8, 2019).

[2] *See* Howmet's Letter, ''Cold-Drawn Mechanical Tubing from the People's Republic of China: Request for Administrative Review,'' dated February 28, 2019.

[3] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from the People's Republic of China—Domestic Industry's Request for 2017–2018 First Administrative Review,'' dated February 28, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019) (*Initiation Notice*), as corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019).

[5] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from the People's Republic of China—Petitioners' Withdrawal of Request for an Administrative Review and Request for Rescission of Review,'' dated June 27, 2019.

[6] *See* Howmet's Letter, ''Cold-Drawn Mechanical Tubing from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated July 31, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–874]

Certain Hot-Rolled Steel Flat Products From Japan: Correction to Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the final results of the changed circumstances review of the antidumping duty order

on certain hot-rolled steel flat products from Japan to state the actual rate in effect for Nippon Steel Corporation (NSC) on the date that those final results published.

DATES: Applicable September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Leo Ayala or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945 or (202) 482–1396, respectively.

Background

On September 5, 2019, Commerce published in the **Federal Register** the final results of the changed circumstances review (*CCR Final Results*) of the antidumping duty order [1] on certain hot-rolled steel flat products from Japan.[2] As a result of the CCR, we determined that NSC was the successor-in-interest to Nippon Steel & Sumitomo Metal Corporation (NSSMC).[3] In the **Federal Register** notice, we inadvertently stated that the cash deposit rate in effect for NSC on the date the *CCR Final Results* were published was NSSMC's antidumping duty cash-deposit rate from the underlying investigation (4.99 percent). However, the actual rate in effect for NSC on the date the *CCR Final Results* were published was NSSMC's rate from the final results of the first administrative review (7.64 percent), published on June 28, 2019, which superseded the 4.99 percent investigation rate.[4] Therefore, we are correcting the *CCR Final Results.* This notice serves to correct the NSC rate listed in the *CCR Final Results* from 4.99 percent to 7.64 percent. No other changes have been made to the *CCR Final Results.*

Commerce is issuing and publishing these final results and notice in accordance with sections 751(b)(1) and (4) and 777(i) of the Act, and sections 19 CFR 351.216 and 351.221(c)(3)(i).

Dated: September 11, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–20175 Filed 9–17–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016).

[2] In the *CCR Final Results,* we determined that Nippon Steel Corporation (NSC) was the successor-in-interest to Nippon Steel & Sumitomo Metal Corporation (NSSMC) for purposes of determining antidumping duty cash deposits and liabilities. *See Certain Hot-Rolled Steel Flat Products from Japan: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 46713 (September 5, 2019) (*CCR Final Results*).

[3] *Id.*

[4] *See Certain Hot-Rolled Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 31025 (June 28, 2019). This cash deposit requirement shall remain in effect until further notice.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in this case is not in harmony with Commerce's final scope ruling and is, therefore, finding that zinc and nylon anchors imported by Simpson Strong-Tie Company (Simpson), are not within the scope of the antidumping duty order on certain steel nails (nails) from the People's Republic of China (China).

DATES: Applicable August 4, 2019.

FOR FURTHER INFORMATION CONTACT: Annathea Cook, Office V, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0250.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 2016, Simpson submitted a scope request asking Commerce to confirm its claim that ''Zinc Nailon™'' anchors and ''Nylon Nailon™'' anchors [1] are outside the scope of the antidumping duty order on nails from China.[2] Simpson described the zinc and nylon anchors as consisting of two parts: (1) A zinc alloy or nylon body; and (2) a carbon and stainless steel pin.[3]

Commerce issued its Final Scope Ruling on March 20, 2017, finding that Simpson's zinc and nylon anchors were subject to the scope of the *Order* based upon the plain meaning of the *Order* and the description of the zinc and nylon anchors contained in Simpson's scope ruling request.[4] Commerce also found that several sources under 19 CFR 351.225(k)(1)—particularly the petition, the final determination of the International Trade Commission (ITC) issued in connection with the underlying investigation, and prior scope rulings—further supported Commerce's determination that Simpson's zinc and nylon anchors fall within the scope of the *Order.*[5] As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of Simpson's zinc and nylon anchors.[6]

Simpson challenged Commerce's Final Scope Ruling before the CIT. On September 21, 2018, the CIT remanded the Final Scope Ruling, holding that Simpson's zinc and nylon anchors are not a ''nail'' within the plain meaning of the word and are, therefore, outside the scope of the *Order.*[7] The CIT relied on dictionary definitions to determine the definition of ''nail'' and concluded that, because Simpson's zinc and nylon anchors are a unitary article of commerce, the entire product, not just a component part, must fit the definition of a nail to fall within the scope of the *Order.*[8] Therefore, the CIT held that the entire zinc or nylon anchor is not a nail ''constructed of two or more pieces'' pursuant to the *Order.*[9] Additionally, the CIT held that, because the relevant industry classifies anchors with a steel pin as anchors, not nails, trade usage further supports the conclusion that Simpson's zinc and nylon anchors are not nails.[10] In support of its conclusion, the CIT cited its decision in *OMG, Inc.* v. *United States,* in which it found a product with a zinc anchor body and a

[1] *See* Simpson's Letter, ''Certain Steel Nails from the People's Republic of China (A–570–909) for Simpson Strong-Tie and Certain ''Zinc and ''Nylon Nailon™'' Pin Drive Anchors,'' dated July 21, 2016 (Scope Request).

[2] *See Antidumping Duty Order: Certain Steel Nails from the People's Republic of China,* 73 FR 44961 (August 1, 2008) (*Order*).

[3] See Scope Request at 3–4, and 18.

[4] *See* Memorandum, ''Antidumping and Countervailing Duty Orders on Certain Steel Nails from the People's Republic of China: Final Scope Ruling on Simpson Strong-Tie Company's Anchors,'' dated March 20, 2017 (Final Scope Ruling).

[5] *Id.* at 12–13.

[6] *See* Message Number 7125304, dated May 5, 2017.

[7] *See Simpson Strong-Tie Company,* v. *United States,* Court No. 17–00057, Slip Op. 18–123 (CIT 2018) (*Remand Order*).

[8] *See Remand Order,* Slip Op. 18–123 at 10–11.

[9] *Id.* at 11.

[10] *Id.* at 11–12.

steel pin outside the scope of the antidumping duty order on certain steel nails from the Socialist Republic of Vietnam.[11]

The CIT remanded the Final Scope Ruling to Commerce for further consideration consistent with the CIT's opinion.[12] The CIT also directed Commerce to issue appropriate instructions to CBP regarding the suspension of liquidation of Simpson's zinc and nylon anchors.[13]

Pursuant to the CIT's instructions, on remand, under respectful protest, Commerce found that Simpson's zinc and nylon anchors do not fall within the scope of the *Order*.[14] On July 25, 2019, the CIT sustained Commerce's Final Remand Results.[15]

Timken Notice

In its decision in *Timken,*[16] as clarified by *Diamond Sawblades,*[17] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's July 25, 2019 judgment in this case constitutes a final decision of the court that is not in harmony with Commerce's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of components for nails pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its final scope ruling and finds that the scope of the *Order* does not cover the zinc and nylon anchors specified in Simpson's Scope Request. Commerce will instruct CBP that the cash deposit rate will be zero percent for zinc and nylon articles subject to Simpson's Scope Request. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of Simpson's zinc and nylon anchors without regard to antidumping duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1) of the Act.

Dated: September 12, 2019.

James Maeder,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–20174 Filed 9–17–19; 8:45 am]

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[11] *Id.* at 12–13 (citing *OMG, Inc.* v. *United States,* Court No. 17–00036, Slip. Op. 18–63 (CIT 2018)).

[12] *Id.* at 15.

[13] *Id.*

[14] *See* Final Results of Redetermination Pursuant to Court Remand, *Simpson Strong-Tie Company,* v. *United States,* Court No. 17–00057, Slip Op. 18–123 (CIT September 21, 2018), dated December 20, 2018 (Final Remand Results).

[15] *See Simpson Strong-Tie Company,* v. *United States,* Court No. 17–00057, Slip Op. 19–93 (CIT 2019).

[16] *See Timken Co.* v. *United States,* 893 F. 2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[17] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964]

Seamless Refined Copper Pipe and Tube From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), November 1, 2017 through October 31, 2018. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2010, Commerce published in the **Federal Register** an antidumping (AD) order on seamless refined copper pipe and tube (copper pipe and tube) from the People's Republic of China (China).[1] On November 1, 2018, Commerce published a notice of opportunity to request an administrative review of the *Order*.[2] On November 30, 2018, the Mueller Copper Tube Products, Inc. and Mueller Copper Tube Company, Inc., (collectively, the petitioners), timely requested that Commerce conduct an administrative review of this AD order with respect to 16 companies.[3] On February 6, 2019, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published the notice of initiation of the administrative review of the AD *Order* on copper pipe and tube from China for the POR covering 16 companies.[4]

All requests for administrative review were timely withdrawn with regard to 12 companies (listed in Appendix II to this notice), leaving 4 companies subject to the administrative review.[5] On March 4, 2019, we selected the Golden Dragon Entity as the sole producer or exporter eligible for individual examination as a mandatory respondent in this administrative review.[6] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[7]

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's AD and Countervailing Duty Centralized Electronic Service System (ACCESS).

[1] *See Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value from Mexico,* 75 FR 71070 (November 20, 2010) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 54912 (November 1, 2018).

[3] *See* Petitioners' Letter, ''Seamless Refined Copper Pipe and Tube from China: Request for Antidumping Duty Administrative Review,'' dated November 30, 2018.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019) (*Initiation Notice*).

[5] *See* Petitioners' Letter, ''Seamless Refined Copper Pipe and Tube from China: Partial Withdrawal of Request for Administrative Review of Antidumping Order,'' dated May 6, 2019 (Withdrawal Request). A request for an administrative review therefore remains in place for 4 companies not named in the Withdrawal Request.

[6] *See* Memorandum, ''Issuance of Questionnaire,'' dated March 4, 2019 (Respondent Selection Memorandum). As explained in the Respondent Selection Memorandum, the Golden Dragon Entity is a collapsed entity that encompasses three of the companies initiated upon in the *Initiation Notice, i.e.,* Golden Dragon Holding (Hong Kong) International Co., Ltd., Golden Dragon Precise Copper Tube Group, Inc., and Hong Kong GD Trading Co, Ltd.

[7] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Seamless Refined Copper Pipe and Tube from the People's Republic of China: 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[8] The revised deadline for the preliminary results of this review is now September 11, 2019.

Scope of the Order

The merchandise subject to the order is seamless refined copper pipe and tube. The product is currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 7411.10.1030 and 7411.10.1090. Products subject to this order may also enter under HTSUS item numbers 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive.[9]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary results of review, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all requests for administrative review were timely withdrawn for certain companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to 12 of the 16 companies named in the *Initiation Notice.*[10] *See* Appendix II for a list of these companies.

Separate Rates

In the *Initiation Notice,* we informed parties of the opportunity to request a separate rate.[11] In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assigned a single weighted-average dumping margin. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies that wanted to qualify for separate rate status in this administrative review were required to timely file, as appropriate, a separate rate application (SRA) or a separate rate certification (SRC) to demonstrate their eligibility for a separate rate. SRAs and SRCs were due to Commerce within 30 calendar days of the publication of the *Initiation Notice.*[12]

On April 18, 2019, the Golden Dragon Entity notified Commerce that it would not participate further in this administrative review.[13] Furthermore, the Golden Dragon Entity failed to respond to sections C and D of Commerce's antidumping questionnaire; consequently, given that we are unable to verify its separate rate status, we preliminarily find that the Golden Dragon Entity is ineligible for separate rate status.[14] Sinochem Ningbo Import & Export Co., Ltd. did not file either a SRA or a SRC within 30 calendar days of the publication of the *Initiation Notice.* Therefore, we preliminarily find that Sinochem Ningbo Import & Export Co., Ltd. is ineligible for separate rate status.

China-Wide Entity

We preliminarily find that the Golden Dragon Entity is part of the China-wide entity in this administrative review, because it failed to respond to Commerce's antidumping questionnaire after being selected as a mandatory respondent and because we are unable to verify its separate rate status. We also preliminarily find that Sinochem Ningbo Import & Export Co., Ltd. is a part of the China-wide entity in this administrative review because it failed to submit either an SRA or an SRC.

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[15] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in the instant review, the entity is not under review, and the entity's current rate, *i.e.,* 60.85 percent,[16] is not subject to change.

Disclosure and Public Comment

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days of the public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce did not calculate weighted-average dumping margins for any companies in this review, nor for the China-wide entity, there is nothing further to disclose.

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[17] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs are filed.[18] Parties who submit case or rebuttal briefs in this review are requested to submit with each argument: (a) A statement of the issue; (b) a brief summary of the argument; and (c) a table of authorities.[19]

[8] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[9] *See* Preliminary Decision Memorandum for a complete description of the scope of the order.

[10] *See Initiation Notice,* 84 FR at 2160.

[11] *Id.*

[12] *Id.*

[13] *See* Golden Dragon Entity's Letter, ''Seamless Refined Copper Pipe and Tube from China: Notice of Non-Participation,'' dated April 18, 2019.

[14] *See Initiation Notice,* 84 FR at 2160. (''For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.'').

[15] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[16] *See Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 27688, 27689 (June 16, 2017).

[17] *See* 19 CFR 351.309(c)(1)(ii).

[18] *See* 19 CFR 351.309(d).

[19] *See* 19 CFR 351.309(c)(2) and (d)(2).

Any interested party may request a hearing within 30 days of publication of this notice.[20] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[21]

All submissions, with limited exceptions, must be filed electronically using ACCESS.[22] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[23]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in any briefs received, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, AD duties on all appropriate entries covered by this review.[24] Commerce intends to issue assessment instructions to CBP 15 days after publication of the final results of this review.

We intend to instruct CBP to liquidate entries containing subject merchandise exported by the China-wide entity at the China-wide rate. Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the China-wide rate.[25]

For the companies for which this review is rescinded, AD duties shall be assessed at rates equal to the cash deposit of estimated AD duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP for those companies 15 days after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements for estimated AD duties, when imposed, will apply to all shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) If the companies preliminarily determined to be eligible for a separate rate receive a separate rate in the final results of this administrative review, their cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review, as adjusted for domestic and export subsidies (except, if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for any previously investigated or reviewed Chinese and non-Chinese exporters that are not under review in this segment of the proceeding but that received a separate rate in the most recently completed segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; (4) for the China-wide entity, the cash deposit rate will be 60.85 percent; and (5) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of AD duties occurred and the subsequent assessment of double AD duties.

Notification to Interested Parties

We are issuing and publishing notice of these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 11, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Respondent Selection
V. Rescission of Administrative Review, in Part
VI. Non-Market Economy Country
VII. Separate Rates
VIII. The China-Wide Entity
IX. Recommendation

Appendix II

Companies for Which This Administrative Review Is Being Rescinded

1. Zhejiang Hailiang Co., Ltd.
2. Shanghai Hailiang Copper Co., Ltd.
3. Zhejiang Jiahe Pipes Inc
4. Sinochem Ningbo Ltd.
5. Ningbo Jintian Copper Tube Co., Ltd.
6. Zhejiang Naile Copper Co., Ltd.
7. Guilin Lijia Metals Co., Ltd.
8. Foshan Hua Hong Copper Tube Co., Ltd
9. Taicang City Jinxin Copper Tube Co., Ltd.
10. Hong Kong Hailiang Metal.
11. China Hailiang Metal Trading.
12. Shanghai Hailiang Metal Trading Limited.

[FR Doc. 2019–20176 Filed 9–17–19; 8:45 am]

BILLING CODE 3510–DS–P

[20] *See* 19 CFR 351.310(c).

[21] *See* 19 CFR 351.310(d).

[22] *See generally* 19 CFR 351.303.

[23] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[24] *See* 19 CFR 351.212(b)(1).

[25] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–PR–A004

Marine Mammals; File No. 23092

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that C. Scott Baker, Ph.D., Oregon State University, Marine Mammal Institute, Hatfield Marine Science Center, 2030 SE Marine Science Drive, Newport, OR 97365, has applied in due form for a permit to receive, import, and export

marine mammals specimens for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before October 18, 2019.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23092 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Shasta McClenahan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a permit to receive, import, and export samples of marine mammal parts collected legally from any species of cetaceans and pinnipeds, except the walrus, for scientific research. The proposed research is intended to maximize the biological information gained from each sample and is expected to result in an improved understanding of the taxonomy, genetic diversity, population structure, abundance, and individual movement of marine mammals. The anticipated U.S. and foreign sources of samples include the following: Animals in captivity (samples taken during routine husbandry procedures or under separate authorization); animals in foreign countries stranded alive or dead or that died during rehabilitation; animals killed during legal subsistence hunting; animals killed incidental to legal commercial fishing operations; and samples from other authorized persons or collections. The total number of samples that will be received, imported, or exported will not exceed 5,000 individual cetaceans and 5,000 individual pinnipeds, annually. The requested period of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 13, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–20169 Filed 9–17–19; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on October 3, 2019, from 10:00 a.m. to 3:30 p.m., the Technology Advisory Committee (TAC) will hold a public meeting in the Conference Center at the Commodity Futures Trading Commission's headquarters in Washington, DC. At this meeting, the TAC will hear presentations and actionable recommendations from the TAC subcommittees on Automated and Modern Trading Markets, Distributed Ledger Technology and Market Infrastructure, Virtual Currencies, and Cyber Security.

DATES: The meeting will be held on October 3, 2019, from 10:00 a.m. to 3:30 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by October 10, 2019.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. You may submit public comments, identified by ''Technology Advisory Committee,'' by any of the following methods:

- *CFTC Website: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Meghan Tente, TAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5785.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

- *Domestic Toll Free:* 1–877–951–7311.
- *International Toll and Toll Free:* Will be posted on the CFTC's website, *http://www.cftc.gov,* on the page for the meeting, under Related Links.
- *Pass Code/Pin Code:* 3637010.

The meeting agenda may change to accommodate other TAC priorities. For agenda updates, please visit the TAC committee website at: *https://www.cftc.gov/About/CFTCCommittees/TechnologyAdvisory/tac_meetings.html.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website at: *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting

because of a disability should notify the contact person above.

(Authority: 5 U.S.C. app. 2 section 10(a)(2)).

Dated: September 13, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–20177 Filed 9–17–19; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0048]

Request for Information Regarding Tech Sprints

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) seeks comments and information to identify opportunities to utilize Tech Sprints as a means to encourage regulatory innovation and collaborate with stakeholders in developing viable solutions to regulatory compliance challenges.

DATES: Comments must be received by November 8, 2019.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2019–0048, by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2019-RFI-TechSprints@cfpb.gov.* Include Docket No. CFPB–2019–0048 in the subject line of the message.
- *Mail:* Comment Intake, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G St. NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard time. You can make an appointment to inspect the documents by telephoning 202–435–9169.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. 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.

FOR FURTHER INFORMATION CONTACT: For general inquiries and submission process questions, please call Tim Lambert at (202) 435–7523. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has a statutory responsibility to regularly identify and address outdated, unnecessary or unduly burdensome regulations in order to reduce unwarranted regulatory burdens. 12 U.S.C. 5511(b)(3). Technology plays an increasingly critical role in financial regulatory compliance. For financial institutions, technology is used to assess and address compliance risk. Government regulators use technology to help evaluate market risks and effectively deploy compliance and enforcement resources. Interactions between regulators and financial institutions are facilitated by technology in areas such as regulatory reporting, and improvements in supervision technology can help to modernize the examination process. Finally, the evolution of technologies used in credit markets, while potentially increasing access to responsible credit, challenge financial institutions and regulators to properly identify and control risk.

In all these areas, regulators are exploring how they can effectively engage with financial technology to help keep up with the rapidly accelerating pace of innovation. The integration of technology and regulatory compliance has the potential to harness technological advances to reduce burden, improve results, and create greater efficiencies across financial markets that can ultimately reduce consumer costs. The expertise of vendors, regulated entities, academia, and community groups can help regulators understand the benefits and risks of such technology.

Technological Innovation at the Bureau

Among the objectives established by Congress for the Bureau is to facilitate innovation. 12 U.S.C. 5511(b)(5). The Bureau has worked to achieve this goal not only in its work with external stakeholders but also in its own operations. In developing software, the Bureau has adopted open source practices, permitting industry to use its shared code, build directly to its specifications, and suggest improvements and enhancements to Bureau systems. In regulatory reporting, the Bureau created an entirely cloud-based platform for the submission, processing, and publication of Home Mortgage Disclosure Act (HMDA) data by the Federal Financial Institutions Examination Council (FFIEC), with a web-based filing application replacing the former email, fax, paper, and electronic-file based system. The Bureau developed the new HMDA Platform (*https://ffiec.cfpb.gov*) through extensive consultations with HMDA users with the goal of minimizing burden and cost for both regulated entities and government while satisfying all legal requirements and increasing overall efficiencies. The new system, developed as open source (*https://github.com/cfpb/hmda-platform*), was guided by a philosophy of continuous improvement to avoid rapidly outdated software, using a container-based (*https://hub.docker.com/u/hmda*) microservices approach and modern cloud architectures. The front-end design incorporated user testing to refine and improve the data filing as well as publication capabilities. Regulatory file submissions are processed through the HMDA Platform Rule Engine, a translation of regulation text to program code, and users are presented with success and error results of HMDA ''edits'' during the annual filing process. First deployed in 2018, the HMDA Platform requires just one interaction with the FFIEC to complete required data filing, replacing an iterative process that generally lasted weeks. Additionally, the HMDA Platform allows users to produce and export custom data sets rather than relying on numerous static reports that few previously accessed. To enable external software developers to access some of the key services offered by the HMDA Platform, the Bureau publishes Application Programming Interfaces (APIs) that can be integrated into external websites, analytical tools, and industry software.

The Bureau has innovated in other areas as well. Bureau regulations are available in the form of open source Interactive Regulations, making legal requirements easier to read, navigate and understand. The Bureau uses machine learning to analyze and interpret consumer complaints it receives in order to quickly identify new and emerging risks in the consumer

marketplace. In addition, upon assuming the chairmanship of the FFIEC earlier this year, the Bureau's Director identified as a priority the issue of data transfer from financial institutions to regulators, and is working with the other FFIEC agencies to identify opportunities for improvement and burden reduction.

To guide its efforts to facilitate innovation, the Bureau seeks to strengthen its open collaboration with stakeholders in order to work together in developing solutions to shared problems. It looks to foster an approach that inquires how technology might reshape compliance, speed effective interaction between regulators and financial institutions, and decrease cost and administrative burden.

Tech Sprints

The Bureau is exploring Tech Sprints as a model for collaborative innovation. Used successfully by the Financial Conduct Authority (FCA) in the United Kingdom, Tech Sprints gather regulators, technologists, financial institutions, and subject matter experts from key stakeholders for several days to work together to develop innovative solutions to clearly-identified challenges. Small teams include participants from both the regulator and a diversity of entities to ensure the inclusion of regulatory, industry, and technology perspectives. The regulator assigns a specific regulatory compliance or market problem to each team and challenges the teams to solve or mitigate the problem using modern technologies and approaches. The teams then work for several days to produce actionable ideas, write computer code, and present their solutions. On the final day, each team presents to an independent panel of judges that selects winners. The most promising ideas can then be further developed either in collaboration with the regulator or by external parties. The FCA has organized seven Tech Sprints since 2016 and has started a pilot project on digital regulatory reporting built on ideas developed in a Tech Sprint.

In the United States, Tech Sprints have been used in a variety of ways, including by the U.S. Census Bureau (Census Bureau) and the U.S. Department of Health and Human Services (HHS). At the Census Bureau, The Opportunity Project (TOP) matched tech companies, universities, government and communities together to translate U.S. government open data into useful digital products over the course of a 12-week sprint. At the end of the sprint, products launched and often moved on to full development as tools for the public. HHS, along with Presidential Innovation Fellows, organized health Tech Sprints known as TOP Health focused on healthcare-related challenges that used artificial intelligence (AI) and machine learning techniques with Federal data.

Call for Ideas

The Bureau seeks ideas on how it can use Tech Sprints to advance regulatory innovation and compliance. Specifically, the Bureau is interested in using Tech Sprints:

- To leverage cloud solutions, machine automated compliance checks that allow for independent validation by regulators, and other developments that may reduce or modify the need for regulated entities to transfer data to the Bureau.
- To continue to innovate HMDA data submission, processing, and publication to help ease burden, increase flexibility, and resolve compliance challenges, while satisfying all legal requirements.
- To identify new technologies and approaches that can be used by the Bureau to provide more cost-effective oversight of supervised entities, effective evaluation of compliance and risk, and closer interface with financial industry systems and technology that may include the use, for example, of analytical tools in the review of mortgage origination data.
- To explore other technological approaches to robust and secure data access or exchange between regulated entities and the Bureau.
- To reduce unwarranted regulatory compliance burdens.

The information provided will help the Bureau identify how stakeholders can work together to create a regulatory environment (1) which allows innovation to flourish, is flexible, efficient and effective; (2) where new and/or emerging risks can be identified and managed effectively; and (3) where consumers have the appropriate level of protection and suitable access to the benefits of technological advancement. The Bureau is seeking to collaborate with stakeholders in developing solutions to regulatory compliance challenges, and is not seeking to endorse a particular product or service.

In particular, the Bureau asks commenters to respond to the following questions:

- What regulatory compliance issues, problems, procedures, or requirements could benefit from innovation through a Bureau Tech Sprint?
- What financial technology or other advances hold the most promise for helping modernize regulatory compliance?
- What other suggestions do you have for how the Bureau could plan, organize, and conduct a Tech Sprint, including its participants, duration, and location?
- Other than organizing Tech Sprints, what else might the Bureau do to encourage innovation in financial products and services? For example, could advances be encouraged by changes to certain Bureau rules or policies?
- Are there any concerns that might discourage participation in Tech Sprints that the Bureau could address?

Authority: 12 U.S.C. 5511(c).

Dated: September 12, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–20201 Filed 9–17–19; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2019–HA–0066]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 18, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Mr. Josh Brammer, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Assessment of Real Warriors Campaign's Impact on Negative Perceptions About Mental Health Conditions and Treatment and Awareness of Resources; OMB Control Number 0720–XXXX.

Type of Request: New.
Number of Respondents: 2,772.
Responses per Respondent: 3.
Annual Responses: 8,316.
Average Burden per Response: 6.33 minutes.
Annual Burden Hours: 877.338.
Needs and Uses: The information collection requirement is necessary to conduct an online study testing the potential for influence of the Real Warriors Campaign—a Department of Defense (DoD) mental health public awareness campaign—on participants of an online panel. Military service members, veterans, and friends and family members of service members and veterans will be recruited from the panel. They will complete online surveys and view mental health public awareness campaign materials (*e.g.,* public service announcements websites). The purpose of this research is to evaluate how exposure to this federally-funded mental health public awareness campaign changes key outcomes related to mental health and health care, such as mental health awareness (*e.g.,* knowing how to recognize and support someone with a mental health problem), perceptions and beliefs about stigma and other barriers to care (*e.g.,* social distance, concerns about career impacts), attitudes towards seeking professional help, intentions to seek treatment if needed, and intentions to conceal a mental health problem. DoD will use the findings from these analyses to improve the Real Warriors campaign. Additionally, the findings from the study will be shared through publicly available communications.
Affected Public: Individuals or households.
Frequency: As required.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Josh Brammer.
You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:
• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.
DOD Clearance Officer: Ms. Angela James.
Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 12, 2019.

Aaron T. Siegel,
Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–20155 Filed 9–17–19; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2019–OS–0106]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.
ACTION: Notice of a modified System of Records.

SUMMARY: The Office of the Secretary of Defense (OSD) is modifying four systems of records: DMDC 11 DoD, Investigative Records Repository; DMDC 12 DoD, Joint Personnel Adjudication System; DMDC 13 DoD, Defense Central Index of Investigations, and DMDC 24 DoD, Defense Information System for Security, by amending the address listed within the Record Access Procedures and Notification Procedures sections of the aforementioned Systems of Records Notices (SORNs). Additionally, the OSD is updating the System Location address for one of the SORNs, DMDC 11 DoD. All four SORNs were reformatted in accordance with Appendix III of Office of Management and Budget Memorandum Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' December 23, 2016.

DATES: These modifications are applicable on September 18, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20311–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Defense Manpower Data Center (DMDC) Privacy Office responsible for these systems of records was relocated from Boyers, Pennsylvania to Fort Knox, Kentucky. The address change to the Record Access and Notification Procedures sections of the SORNs will enable individuals to determine if information about themselves is contained in the system and to request access to their records in a timely manner. The System Location address for DMDC 11 DoD was also changed to the Fort Knox address.
DMDC 11 DoD, titled ''Investigative Records Repository,'' is an automated data system used to securely store, and disseminate Personnel Security Investigations to other Government agencies with investigative or adjudicative authority. To ensure the acceptance or retention of persons with access to classified DoD information, installations or facilities, or granting individuals, including those employed in defense industry, access to classified DoD information, installation, or facility is clearly consistent with national security.
DMDC 12 DoD, titled ''Joint Personnel Adjudication System (JPAS),'' is a DoD enterprise automated system for personnel security, providing a common, comprehensive medium to record, document, and identify personnel security actions within the Department including submitting adverse information, verification of clearance status (to include grants of interim clearances), requesting investigations, and supporting continuous evaluation activities.
DMDC 13 DoD, titled ''Defense Central Index of Investigations (DCII),'' is a central database of DoD conducted or sponsored investigations used by DoD law enforcement activities, personnel security adjudicators, and in continuous evaluation of individuals. Also, the system aggregates the results of National Agency Check (NAC) information prior to February 2005 (NAC information after this period is maintained by the Office of Personnel Management as well as other Federal investigative agencies). Records document investigations on file with DoD agencies and the United States Coast Guard. Also, the database provides data query, data management and reporting capabilities on data pertaining to the existence and physical location of criminal and personnel security investigative files.
DMDC 24 DoD, titled ''Defense Information System for Security (DISS),'' is a DoD enterprise information system for personnel security, providing a common, comprehensive medium to request, record, document, and identify personnel security actions within the Department including: Determinations of eligibility and access to classified information, national security, suitability and/or fitness for employment, and Homeland Security Presidential Directive 12 determination for personal identity verification to gain access to government facilities and systems, submitting adverse information, verification of investigation

and/or adjudicative status, support of continuous evaluation and insider threat detection, prevention, and mitigation activities. DISS consists of two applications, the Joint Verification System (JVS) and the Case Adjudication Tracking System (CATS). The DoD Adjudicative Community uses CATS to record eligibility determinations. JVS is used by DoD Security Managers and Industry Facility Security Officers for the purpose of verifying eligibility, recording access determinations, submitting incidents for subsequent adjudication, and visit requests from the field (worldwide).

The OSD is modifying four systems of records by amending the Record Access Procedures and Notification Procedures to reflect a new physical address. The new Record Access and Notification Procedures address for all four SORNs is Department of the Army, Defense Manpower Data Center, 1600 Spearhead Division Avenue, Department 548, Fort Knox, KY 40122–5504. The System Location address for one SORN, DMDC 11 DoD, was also updated to this Fort Knox, KY address.

The OSD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *http://dpcld.defense.gov.*

The proposed systems reports, as required by of the Privacy Act, as amended, were submitted on June 21, 2019, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: September 12, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Investigative Records Repository, DMDC 11 DoD.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

Department of the Army, Defense Manpower Data Center, 1600 Spearhead Division Avenue, Department 548, AHRC–PSI–DMD, Fort Knox, KY 40122–5504.

SYSTEM MANAGER(S):

Director, Defense Manpower Data Center, 4800 Mark Center Drive, Alexandria, VA 22350–6000. Email: *dodhra.dodcmb.dmdc.mbx.webmaster@mail.mil.*

* * * * *

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system must send written signed inquiries to Department of the Army, Defense Manpower Data Center, 1600 Spearhead Division Avenue, Department 548, AHRC–PSI–DMD, Fort Knox, KY 40122–5504.

Signed written requests must contain the subject's full name, SSN, date and place of birth, a description of the records sought, and a current return address.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to: Department of the Army, Defense Manpower Data Center, 1600 Spearhead Division Avenue, Department 548, AHRC–PSI–DMD, Fort Knox, KY 40122–5504.

Signed, written requests should contain the individual's full name, telephone number, street address, email address, and name and number of this system of records notice.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

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* * * * *

HISTORY

September 30, 2011, 76 FR 60812.

SYSTEM NAME AND NUMBER:

Joint Personnel Adjudication System (JPAS), DMDC 12 DoD.

SECURITY CLASSIFICATION:

Unclassifed.

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

SYSTEM MANAGER(S):

Director, Defense Manpower Data Center, 4800 Mark Center, Alexandria, VA 22350–6000. Email: *dodhra.dodcmb.dmdc.mbx.webmaster@mail.mil.*

* * * * *

RECORD ACCESS PROCEDURES:

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1600 Spearhead Division Avenue, Department 548, AHRC–PSI–DMD, Fort Knox, KY 40122–5504.

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If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

* * * * *

HISTORY:

April 10, 2015, 80 FR 19287.

SYSTEM NAME AND NUMBER:

Defense Central Index of Investigations (DCII), DMDC 13 DoD.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

SYSTEM MANAGER(S):

Director, Defense Manpower Data Center, 4800 Mark Center Drive, Alexandria, VA 22350–6000. Email: *dodhra.dodcmb.dmdc.mbx.webmaster@mail.mil.*

* * * * *

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system must send written signed inquiries to Department of the Army, Defense Manpower Data Center, 1600 Spearhead Division Avenue, Department 548, AHRC–PSI–DMD, Fort Knox, KY 40122–5504.

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If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

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NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to: Department of the Army, Defense Manpower Data Center, 1600 Spearhead Division Avenue, Department 548, AHRC–PSI–DMD, Fort Knox, KY 40122–5504.

Signed, written requests should contain the individual's full name, telephone number, street address, email address, and name and number of this system of records notice.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

* * * * *

HISTORY:

February 12, 2015, 80 FR 19287.

SYSTEM NAME AND NUMBER:

Defense Information System for Security (DISS), DMDC 24 DoD.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Manpower Data Center (DMDC), DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

SYSTEM MANAGER(S):

Director, Defense Manpower Data Center, 4800 Mark Center Drive, Alexandria, VA 22350–6000. Email: *dodhra.dodcmb.dmdc.mbx.webmaster@mail.mil.*

* * * * *

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Signed written requests must contain the subject's full name, SSN, date and place of birth, a description of the records sought, and a current return address.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to: Department of the Army, Defense Manpower Data Center, 1600 Spearhead Division Avenue, Department 548, AHRC–PSI–DMD, Fort Knox, KY 40122–5504.

Signed, written requests should contain the individual's full name, telephone number, street address, email address, and name and number of this system of records notice.

In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

* * * * *

HISTORY:

June 15, 2016, 81 FR 39032.

[FR Doc. 2019–20145 Filed 9–17–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 19, 2019, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1059TH—MEETING

[Open Meeting; September 19, 2019; 10:00 a.m.]

Item No.	Docket No.	Company
		ADMINISTRATIVE
A–1	AD19–1–000	Agency Administrative Matters.
A–2	AD19–2–000	Customer Matters, Reliability, Security and Market Operations.
		ELECTRIC
E–1	RM19–15–000	Qualifying Facility Rates and Requirements.
	AD16–16–000	Implementation Issues Under the Public Utility Regulatory Policies Act of 1978.
E–2	EL18–26–000	EDF Renewable Energy, Inc. v. Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc., and PJM Interconnection, L.L.C.
	AD18–8–000	Reform of Affected System Coordination in the Generator Interconnection Process.
E–3	EL17–89–000	American Electric Power Service Corporation v. Midcontinent Independent System Operator, Inc. Southwest Power Pool, Inc.
E–4	EL19–60–000	City of Prescott, Arkansas v. Southwestern Electric Power Company. Midcontinent Independent System Operator, Inc.
E–5	EL17–89–000	American Electric Power Service Corporation v. Midcontinent Independent System Operator, Inc. Southwest Power Pool, Inc.
	EL19–60–000	City of Prescott, Arkansas v. Southwestern Electric Power Company. Midcontinent Independent System Operator, Inc.
E–6	ER19–2273–000	Southwest Power Pool, Inc. Sunflower Electric Power Corporation.
E–7	ER10–2126–005, EL19–87–000	Idaho Power Company.
E–8	ER18–1225–001	Southwestern Electric Power Company.
	EL18–122–001	Minden, Louisiana v. Southwestern Electric Power Company.
E–9	ER14–874–003	Calpine Bethlehem, LLC.
	ER14–875–003, ER17–2566–002	Calpine Mid-Atlantic Generation, LLC.
	ER12–954–005	Calpine Mid Merit, LLC.
	ER14–873–003, ER15–2495–003	Calpine New Jersey Generation, LLC.
	ER15–2735–006	Garrison Energy Center LLC.
	ER10–2214–005	Zion Energy LLC.
E–10	ER19–2422–000	San Diego Gas & Electric Company. Sempra Gas & Power Marketing, LLC.
E–11	ER18–855–000	Panoche Valley Solar, LLC.
E–12	Omitted.	
E–13	ER14–225–005, ER14–225–006, EL19–68–000, EL19–68–001.	New Brunswick Energy Marketing Corporation.
E–14	EC19–63–000	NRG Wholesale Generation LP. Entergy Mississippi, LLC.
E–15	EC18–63–001	Bayou Cove Peaking Power, LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, Louisiana Generating LLC, Sterlington Power LLC, NRG Cottonwood Tenant LLC, NRG Power Marketing LLC, Cleco Cajun LLC, Cleco Corporate Holdings LLC, Cleco Group LLC, Cleco Partners L.P.
E–16	ER18–370–002	Southern California Edison Company.
E–17	EL17–45–001	California Public Utilities Commission, Northern California Power Agency, City and County of San Francisco, State Water Contractors, and Transmission Agency of Northern California v. Pacific Gas and Electric Company.
E–18	EL18–194–001	Nebraska Public Power District v. Tri-State Generation and Transmission Association, Inc., Southwest Power Pool, Inc.
	ER16–204–000 (not consolidated)	Southwest Power Pool, Inc.

1059TH—MEETING—Continued

[Open Meeting; September 19, 2019; 10:00 a.m.]

Item No.	Docket No.	Company
E–19	Omitted.	
E–20	EL19–2–000	Tipmont Rural Electric Member Cooperative v. Wabash Valley Power Association, Inc.
E–21	EL19–72–000, QF90–73–010	EF Kenilworth, LLC.
E–22	EL19–10–000	New England Ratepayers Association.
E–23	ER19–2023–000	Tucson Electric Power Company.
E–24	Omitted.	
E–25	EL18–143–001	Public Service Electric and Gas Company v. Consolidated Edison Company of New York, Inc.
GAS		
G–1	RP19–1371–000	West Texas Gas, Inc.
G–2	Omitted.	
HYDRO		
H–1	P–14896–003, P–14897–003, P–14898–003, P–14899–003, P–14900–003, P–14901–003, P–14902–003, P–14903–003, P–14904–003, P–14905–003, P–14906–003, P–14907–003, P–14908–003, P–14909–003, P–14910–003, P–14911–003, P–14912–003, P–14913–003, P–14914–003, P–14915–003, P–14916–003, P–14917–003, P–14918–003, P–14919–003, P–14920–003, P–14921–003, P–14922–003, P–14923–003, P–14924–003, P–14925–003, P–14926–003, P–14927–003, P–14928–003, P–14929–003, P–14930–003, P–14931–003, P–14932–003, P–14933–003, P–14934–003, P–14935–003, P–14936–003, P–14937–003, P–14938–003, P–14939–003, P–14940–003, P–14941–003, P–14942–003, P–14943–003, P–14944–003, P–14945–003, P–14946–003, P–14947–003, P–14948–003, P–14949–003, P–14950–003, P–14951–003, P–14952–003, P–14953–003, P–14954–003, P–14955–003.	Algignis, Inc.
H–2	P–14858–000	McMahan Hydroelectric, LLC.
H–3	P–13123–028	Eagle Crest Energy Company.
H–4	P–14805–001	Island in the Sky, LLC.
H–5	P–2833–110	Public Utility District No. 1 of Lewis County, Washington.
CERTIFICATES		
C–1	CP18–102–000	Cheyenne Connector, LLC.
	CP18–103–000	Rockies Express Pipeline LLC.
C–2	CP17–41–000	Eagle LNG Partners Jacksonville LLC.

Issued: September 12, 2019.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2019–20255 Filed 9–16–19; 4:15 pm]

BILLING CODE 6717–01–P

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Vicki Barber (202–326–2700), Chief Human Capital Officer, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings, performance awards, and pay-for-performance pay adjustments to the Chairman.

The following individuals have been designated to serve on the Commission's Performance Review Board:

David Robbins, Executive Director, Chairman
Marian Bruno, Deputy Director, Bureau of Competition
Daniel Kaufman, Deputy Director, Bureau of Consumer Protection
Michael Vita, Deputy Director, Bureau of Economics
James Reilly Dolan, Principal Deputy General Counsel

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–20191 Filed 9–17–19; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 181 0215]

US Foods Holding Corp.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement; Request for Comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Agreement Containing Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 18, 2019.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''US Foods Holding Corp.; File No. 181 0215'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Sophia Vandergrift (202–326–2208), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 11, 2019), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 18, 2019. Write ''US Foods Holding Corp.; File No. 181 0215'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''US Foods Holding Corp.; File No. 181 0215'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of

public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 18, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from US Foods Holding Corp. (''USF''), and Services Group of America, Inc. (''SGA'') (collectively, ''Respondents''). The purpose of the Consent Agreement is to remedy the anticompetitive effects that otherwise would result from USF's acquisition of SGA's Food Group of Companies (the ''Proposed Acquisition'') in and around Boise, Idaho (hereafter ''Eastern Idaho''), in and around Bismarck, North Dakota, (hereafter ''Western North Dakota''), in and around Fargo, North Dakota (hereafter ''Eastern North Dakota''), in and around Kent, Washington (hereafter the ''Seattle Area''), and nationwide for multi-regional and national customers.

Among other things, the proposed Consent Agreement requires USF to divest certain of SGA's distribution centers and broadline distribution assets, including employees and tangible assets that are necessary to the operation of the businesses in Eastern Idaho, Western and Eastern North Dakota, and the Seattle Area to Shamrock Foods Co. (''Shamrock''), Cash-Wa Distributing (''Cash-Wa''), and Harbor Wholesale Foods (''Harbor''), respectively.

The Commission and the Respondents have also agreed to an Order to Maintain Assets. This order requires USF and SGA to maintain the assets that the Consent Agreement requires divestiture of, pending their divestiture. The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the market for broadline foodservice distribution in Eastern Idaho, Western North Dakota, Eastern North Dakota, the Seattle Area, and nationwide for multi-regional and national broadline distribution customers.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or finalize the Consent Agreement.

II. The Respondents and the Transaction

USF, headquartered in Rosemont, Illinois, is the second-largest distributor of food and food-related products in the United States. USF operates 61 distribution facilities throughout the United States, all of which provide broadline distribution, and some of which serve national chain customers (providing more of a systems-type service). In fiscal year 2017, USF generated approximately $24 billion in sales to over 200,000 customers nationwide. Nearly $6 billion of those sales were to independent (*i.e.,* non-chain) restaurants.

Headquartered in Scottsdale, Arizona, Services Group of America, Inc. is a holding company made up of six operating companies. SGA is comprised of Food Services of America (''FSA''), a broadline foodservice distributor (notably, FSA is the only SGA business unit that generates competitive concern); Systems Services of America (''SSA''), a systems distributor; Amerifresh, a specialty produce distributor; Ameristar Meats, a specialty meat processor; and GAMPAC, a supply chain and logistics company. In fiscal year 2017, SGA generated approximately $3.2 billion in sales. SGA has nine broadline distribution centers, three systems distribution centers, and three specialty facilities. FSA and SSA are members of Distribution Market Advantage (''DMA''), a supply chain and marketing cooperative owned by eight independent regional foodservice distributors who are also its members. Through DMA, FSA is able to serve national accounts in coordination with other large regional distributors.

On July 28, 2018, USF entered into a Stock Purchase Agreement with SGA. Pursuant to the agreement, USF will purchase all of the outstanding common stock of SGA's Food Group of Companies in an all-cash acquisition valued at $1.8 billion.

III. Broadline Foodservice Distribution in Eastern Idaho, Western North Dakota, Eastern North Dakota, the Seattle Area, and Nationwide

Broadline foodservice distribution and broadline foodservice distribution to national customers are the relevant product markets in which to assess the effects of the Proposed Acquisition. Broadline foodservice distribution involves the sale and distribution of a broad range of national-brand and private-label food and foodservice-related products (such as paper towels, disposable cups, etc.) to a range of customers who serve food-away-from-home to consumers, such as restaurants, hospital cafeterias, stadiums, and schools. Broadline distributors offer customers a distinct combination of products and services that are not replicated by other foodservice distribution channels, including a wide array of stock keeping units (SKUs) to provide customers with product breadth and depth, a broad selection of private-label (*i.e.,* distributor-branded) food products, a frequent and flexible delivery schedule (including next-day delivery), and other value-added services, such as order tracking, menu planning, and nutritional information. Customers value the ability to purchase this bundle of products and services from a single broadline distributor.

There are four local relevant geographic markets in which to analyze the transaction's effects: (1) Eastern Idaho, (2) Western North Dakota, (3) Eastern North Dakota, and (4) the Seattle Area. Competition to serve broadline customers plays out locally. The business of broadline distribution involves regularly loading food (much of which is perishable) and related items onto trucks, driving to customer locations, unloading the merchandise, and returning to the distribution center in time to repeat this process for the next day's deliveries. Customers, therefore, select from among broadline distributors within a reasonable radius of their location. Likewise, broadline distributors are limited in their distribution radius by cost and service considerations. USF and FSA compete from proximate distribution centers to serve customers in Eastern Idaho, Western North Dakota, Eastern North Dakota, and the Seattle Area, and these are thus appropriate geographic markets. FSA serves both North Dakota markets out of its Fargo distribution center, but other distributors serving the Eastern North Dakota market do not serve Western North Dakota, and thus the competitive conditions are different

and it is appropriate to define two geographic markets within the state.

USF and FSA compete closely to serve local broadline customers in Eastern Idaho, Western North Dakota, Eastern North Dakota, and the Seattle Area. The transaction would eliminate a key broadline distributor in each of these markets, limiting customers' ability to switch between distributors and leverage them in order to obtain more competitive pricing and better service. The few remaining competitors in the relevant markets would be insufficient to alleviate competitive concerns. As a result, the Proposed Acquisition will likely lead to higher prices and diminished service for local broadline customers in the four local markets.

The effects of the Proposed Acquisition must also be evaluated in the national market. Through its membership in a consortium of regional distributors, DMA, FSA competes with USF for the provision of broadline distribution services to multi-regional and national accounts. If DMA were to lose all of FSA's distribution centers from its network, it would be rendered a significantly less attractive competitor than it is today to many multi-regional and national customers. As a result, the Proposed Acquisition will likely result in higher prices and reduced quality and service to national customers.

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the acquisition in the Eastern Idaho, Western North Dakota, Eastern North Dakota, Seattle Area, and national markets. The broadline foodservice distribution industry is capital and labor intensive, rendering entry challenging and time consuming, with significant operational and financial risks. Prospective entrants or expanders face three main obstacles: (1) Developing the requisite sales forces and customer base; (2) establishing a properly outfitted distribution center, truck fleet, and driver base for operations and delivery; and (3) building the volume of perishable and non-perishable SKUs necessary to serve broadline customers. To overcome these hurdles, a new entrant or an adjacent company trying to expand must commit a tremendous amount of capital and time to develop relationships with potential customers, build or expand an existing facility, and assemble the equipment required for distribution in that area. Thus, due to the considerable time and investment required to build a functional broadline distribution operation in a new market, entry and expansion are unlikely to be timely, or sufficient to deter or counteract the Proposed Acquisition's anticompetitive effects.

IV. The Proposed Consent Agreement

The proposed Consent Order remedies the likely anticompetitive effects in each of the relevant markets by requiring divestitures to Shamrock, Cash-Wa, and Harbor within 30 days of the Proposed Acquisition's closing. Until the completion of each divestiture, the Respondents are required to abide by the Order to Maintain Assets, which requires them to maintain the viability, marketability, and competitiveness of the divestiture assets until the divestitures are completed. The proposed Consent Order appoints a Monitor to ensure the Respondents' compliance with the Order to Maintain Assets, Consent Order, and Divestiture Agreements in anticipation of and following the divestiture.

Additionally, the proposed Consent Order requires the Respondents to provide transitional services to the approved acquirer for at least 24 months after the divestiture, as needed, to assist the acquirer with the transfer and operation of the divested assets. Finally, the proposed Consent Order contains standard terms regarding the acquirer's access to employees, protection of Material Confidential Information, and compliance reporting requirements, among other things.

A. Eastern Idaho

The proposed Consent Order remedies the likely anticompetitive effects in Eastern Idaho by requiring the divestiture of FSA's distribution center in Boise to Shamrock. The divestiture assets and rights include the distribution center and selected broadline distribution assets, including employees and tangible assets necessary to operate the business.

B. Western and Eastern North Dakota

The proposed Consent Order remedies the likely anticompetitive effects in both Western and Eastern North Dakota by requiring the divestiture of FSA's distribution center in Fargo to Cash-Wa. The divestiture assets and rights include the distribution center and selected broadline distribution assets, including employees and tangible assets necessary to operate the business.

C. The Seattle Area

The proposed Consent Order remedies the likely anticompetitive effects in the Seattle Area by requiring the divestiture of FSA's distribution center in Kent to Harbor. The divestiture assets and rights include the distribution center and selected broadline distribution assets, including employees and tangible assets necessary to operate the local broadline distribution business. Although the proposed Consent Order only requires USF to divest one of FSA's two Seattle-area broadline distribution centers, this remedy will prevent any increase in market concentration levels and preserve the status quo in the Seattle Area broadline distribution market because three major broadline distributors will remain.

D. National

The proposed Consent Order remedies the likely anticompetitive effects in the national market by replacing the loss of FSA from DMA's network with divestiture of the Kent, Boise, and Fargo distribution centers to three purchasers that are existing members of the DMA consortium. The divestiture assets and rights that Shamrock, Cash-Wa, and Harbor will acquire will enable each buyer to operate the local broadline distribution businesses in their respective local markets, but also to provide effective coverage to the DMA network in these regions so that DMA can continue to be an attractive option to, and effective competitor for, multi-regional and national customers.

The proposed Decision and Order will have a term of ten (10) years.

The sole purpose of this analysis is to facilitate public comment on the proposed Consent Agreement. This analysis does not constitute an official interpretation of the proposed Consent Agreement or modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–20182 Filed 9–17–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Announcement of Requirements and Registration for The REACH Lark Galloway-Gilliam Nomination for Advancing Health Equity (REACH Lark Award)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

Award Approving Official: Robert R. Redfield, M.D., Director, Centers for Disease Control and Prevention, and

Administrator, Agency for Toxic Substances and Disease Registry.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) announces the launch of the REACH Lark Galloway-Gilliam Nomination for Advancing Health Equity Award (REACH Lark Award). Racial and ethnic disparities in health remain pervasive across the United States. Over the last 20 years, the Racial and Ethnic Approaches to Community Health (REACH) program has demonstrated success in addressing these disparities and promoting health equity by engaging with diverse communities and implementing culturally tailored interventions. For more information about the REACH Program, visit *https://www.cdc.gov/nccdphp/dnpao/state-local-programs/reach/index.htm.*

This award honors extraordinary individuals, organizations, or community coalitions associated with the REACH program that have made significant advances in the science and/or practice of improving health equity, and the elimination of health disparities at the national, state, or local levels. The intent of the challenge is to recognize efforts made by individuals or teams that meaningfully engage communities to remove barriers to health by addressing factors such as race, ethnicity, education, income, location, and other social determinants of health. To support the science and practice of improving health equity, this challenge can help further the goals of the REACH program by documenting and further disseminating the innovative or unique interventions that led to reduced health disparities achieved by those applying for this award.

DATES: The Challenge will accept nominations from December 1, 2019 through January 28, 2020.

FOR FURTHER INFORMATION CONTACT: Delia Sikes, Division of Nutrition, Physical Activity, and Obesity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy. NE, Mailstop S107–5, Atlanta, GA 30341, Telephone: 770–488–5035, Email: *dnpaopolicy@cdc.gov;* subject line of email: REACH Lark Award.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The challenge is authorized by Public Law 111–358, the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act).

Applicants will be asked to describe how they assisted with and/or successfully implemented culturally tailored interventions that ultimately led to reduced health disparities in chronic conditions including hypertension, heart disease, Type 2 diabetes, or obesity and associated risk behaviors of physical inactivity, poor nutrition, or smoking. This challenge will highlight how diverse communities were engaged to address health disparities and achieve one of the following listed below:

(1) Address preventable risk behaviors (tobacco use, poor nutrition and physical inactivity); or

(2) Link community and clinical efforts to increase access to healthcare and preventive care programs at the community level; or

(3) Support implementation, evaluation and dissemination of practice- and evidence-based strategies related to tobacco, nutrition, physical activity, or community-clinical linkages.

Eligibility Rules for Participating in the Competition

To be eligible to be recognized for this award under this challenge, an individual or team—

(1) Shall have completed the application for the competition under the rules promulgated by HHS/CDC;

(2) Shall have complied with all the requirements under this section and satisfy one of the following requirements:

a. Be a currently- or previously-funded CDC REACH recipient that has not previously received the REACH Lark Award in any year; or

b. Be a technical assistance provider to former or current REACH recipients (Current and past REACH recipients can be found at: *https://www.cdc.gov/nccdphp/dnpao/state-local-programs/reach/index.htm*); or

c. Be a partner organization, part of a partner network, or coalition members that collaborated with current or previously funded REACH recipients;

(3) Shall be a U.S. citizen or legal resident thirteen years of age or older. In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States. The United States means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States; and

(4) Shall not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours;

(6) Shall not be an employee of or contractor at/within CDC;

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications for this challenge.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

(9) An individual or team shall not be deemed ineligible because the individual or team used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

(10) Each individual or team who applies is referred to as the ''Applicant'' and by participating in this challenge, represents, warrants, and agrees that the entry contains accurate information.

(11) Must agree to be recognized and agree to participate in an interview to develop a success story that describes the intervention(s) that promoted health equity. Applicants may be recognized on the Division of Nutrition, Physical Activity, and Obesity, CDC website and/or the CDC website generally. For instance, interventions used by certain applicants that promote health equity may be written into a success story, placed on the Division of Nutrition, Physical Activity, and Obesity website, and/or CDC website, and attributed to the applicants.

(12) By participating in this challenge, individuals and organizations agree to assume any and all risks related to participating in the challenge. Individuals or organizations also agree to waive claims against the Federal Government and its related entities, except in the case of willful misconduct, when participating in the challenge, including claims for injury; death; damage; or loss of property, money, or profits, and including those risks caused by negligence or other causes.

(13) No cash prize will be awarded. The selected nomination will receive a plaque and recognition.

Registration Process for Participants

To compete for this award, individuals and entities may submit an application. Interested parties should go to *https://www.cdc.gov/nccdphp/*

dnpao/state-local-programs/reach/index.htm or *https://www.challenge.gov.* On these sites, applicants will find the guidelines for participating. Applying will require applicants to provide a free-text written statement of 500 words or less that describes the unique and innovative approach that led to reduced health disparities in chronic disease.

Amount of the Prize

A maximum of one (1) Applicant (individual or team) will receive a plaque (''Winner''). While the winner may be invited to meetings by CDC or non-federal individuals/organizations from outside the agency, attendance at such events is not required as a condition of accepting the Prize. No cash prize will be awarded. The selected applicant will receive a plaque and recognition.

Basis Upon Which Winner Will Be Selected

CDC- or non-federal individuals from outside the agency will facilitate a panel of three to five experts consisting of CDC staff and other national experts to review the applications and select a winning entry from all eligible entries based on the following judging criteria:

- The extent to which the applicant's work shows alignment with CDC Office of Minority Health and Health Equity (OMHHE) health equity goals to decrease health disparities, address social determinants of health, and promote access to high quality preventive healthcare. (20 points)
- The extent to which the applicant's work addressed health issues, including hypertension, heart disease, Type 2 diabetes, and/or obesity, and/or addressed the following preventable risk behaviors: Tobacco use, poor nutrition, or physical inactivity. (20 points)
- The extent to which the applicant's work demonstrated success in systems improvement that impacted health outcomes in one or more of the following areas: Access to quality care, education, employment, income, community environment, housing, and public safety. (20 points)
- The extent to which the applicant's work provided a unique or innovative solution to improving outcomes for groups most affected by health disparities, specifically, African Americans/Blacks, American Indians/Alaska Natives, Asian Americans, Hispanic Americans, and Native Hawaiian/Pacific Islanders. (20 points)
- The extent to which the applicant engaged members of the community across different sectors and successfully demonstrated the development and/or implementation and/or evaluation of the work within the community related to groups most affected by health disparities. (20 points)

Judges will use a point system out of 100 to select the winner putting equal emphasis on the bases discussed above. In addition to the 500 word or less free-text written statement, applicants can also submit evidence that demonstrates that the criteria were met through publications, links to online content, and other forms of written material.

After the selection process has been completed, up to 9 applicants (inclusive of the winner) may be asked to participate in a post-challenge telephone discussion about the interventions used by the individual or team to successfully promote health equity and reduce health disparities. Themes from these discussions may be shared publicly to provide additional information to promote innovative and unique interventions that led to reduced health disparities.

Additional Information

The challenge website may post the number of applications received but will not include confidential or proprietary information about individual applicants. The information submitted by applicants will not be posted on the website. Information collected from applicants will include general details, such as the business name, address, and contact information of the nominee. This type of information is generally publicly available.

Information for the Winner, such as the name of the individual or team, location, priority population, and health outcomes will be shared through press releases, the challenge website, and Division of Nutrition, Physical Activity, and Obesity and CDC Resources. Details regarding the Winner and its application may be shared with the public as part of a success story.

The award is named in honor of Lark Galloway-Gilliam, the founding Executive Director of Community Health Councils, Inc. (CHC). CHC began in 1992 to support planning, resource development, and policy education in response to the growing health crisis in the South Los Angeles area and other under-resourced and marginalized communities throughout LA County. Lark led the CHC team to engage communities and strengthen the connections among organizations in order to improve health, eliminate disparities, and achieve health equity. Under Lark's leadership, CHC became an expert in health equity in Los Angeles, across California, and the country. Lark also served in several leadership roles, including the first president of the National REACH Coalition, the MLK Medical center Advisory Board, and the IP3 Board of Directors for Community Commons.

Compliance With Rules and Contacting Challenge Winners

Applicants and the Challenge Winner (and all members of the team, if a team is selected as the Winner) must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements herein. The Winner will be notified by email, telephone, or mail after the date of the judging.

Privacy

If applicants choose to provide HHS/CDC with personal information by registering or filling out the submission form through the *Challenge.gov* website, that information is used to respond to Contestants in matters regarding their submission, announcements of entrants, finalists, and winners of the Contest. Information is not collected for commercial marketing. Winners are permitted to cite that they won this contest.

General Conditions

HHS/CDC reserves the right to cancel, suspend, and/or modify the Challenge, or any part of it, for any reason, at HHS/CDC's sole discretion.

Participation in this Challenge constitutes an applicants' full and unconditional agreement to abide by the Challenge's Official Rules found at *www.Challenge.gov.*

Authority: 15 U.S.C. 3719.

Dated: September 12, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–20162 Filed 9–17–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC); Correction

Notice is hereby given of a change in the meeting of the Clinical Laboratory Improvement Advisory Committee (CLIAC); November 6, 2019, 8:30 a.m. to 5:00 p.m., EST and November 7, 2019, 8:30 a.m. to 12:00 p.m., EST which was published in the **Federal Register** on

August 30, 2019, Volume 84, Number 169, pages 45765–45766.

The *MATTERS TO BE CONSIDERED* should read as follows: The agenda will include agency updates from CDC, the Centers for Medicare and Medicaid Services (CMS); and the Food and Drug Administration (FDA). Presentations and discussions will focus on a follow up on CLIAC recommendations; an update on the clinical laboratory workforce; improving integration of laboratory information systems with electronic health records; and future CLIAC topics. There will be an extended public comment session focusing on emerging technologies and the clinical laboratory. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, MMSc, MT(ASCP), Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4027, telephone (404) 498–2741; *NAnderson@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–20180 Filed 9–17–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4187]

A New Era of Smarter Food Safety; Public Meeting, Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''A New Era of Smarter Food Safety'' to get input from a broad cross-section of stakeholders on a modern approach the Agency is taking to strengthen its protection of the food supply. The purpose of this meeting is to foster a dialogue with our domestic and international regulatory and public health partners, industry, consumers, academia, and others. The input received at this meeting, and in comments submitted to the docket, will be used to shape an FDA Blueprint for a New Era of Smarter Food Safety. This Blueprint will outline how this modern approach will address public health challenges, ranging from being able to trace sources of contaminated foods, to using new predictive analytics tools like artificial intelligence to assess risks, and help prioritize the Agency's work and resources.

DATES: The public meeting will be held on October 21, 2019, from 8:30 a.m. to 5 p.m. Submit either electronic or written comments on this public meeting by November 20, 2019. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at the Hilton Washington DC/Rockville Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852. For more information on the hotel see *https://www.fda.gov/food/news-events-cfsan/workshops-meetings-webinars-food-and-dietary-supplements.*

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 20, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 20, 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–2019–N–4187 for ''A New Era of Smarter Food Safety.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked

as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

For questions about registering for the meeting or to register by phone: Mark Gifford, SIDEM, 1775 Eye St. NW, Suite 1150, Washington, DC 20006, telephone: 240–393–4496, Fax: 202–495–2091, email: *EventSupport@sidemgroup.com.*

For general questions about the meeting or for special accommodations due to a disability: Juanita Yates, Center for Food Safety and Applied Nutrition (HFS–009), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, telephone: 240–402–1731, email: *Juanita.yates@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 2019, FDA released a joint statement from Acting FDA Commissioner Ned Sharpless, M.D., and Deputy Commissioner for Food Policy and Response Frank Yiannas on the New Era of Smarter Food Safety. (*https://www.fda.gov/news-events/press-announcements/statement-acting-fda-commissioner-ned-sharpless-md-and-deputy-commissioner-frank-yiannas-steps-usher*). This is a modern approach to food safety that incorporates the use of new and emerging technologies, considers the challenge of evolving business models, and works to support the development of food safety cultures throughout the global supply chain. The New Era of Smarter Food Safety will enhance the Agency's ongoing efforts to implement the FDA Food Safety Modernization Act (FSMA) by creating a more digital, traceable, and safer system to help protect consumers from contaminated food.

FDA continues to build a modernized regulatory framework that can help ensure the safety of the food supply, including innovations in food ingredients and processes. At the same time, FDA will leverage the use of new and emerging technologies to strengthen predictive capabilities, support the implementation of preventive controls, and speed outbreak response.

Today's technology-focused world has changed the way our society operates, creating a highly complex and globally interconnected landscape. The food system has evolved from a system that sources foods from around the corner to a system that brings in foods from around the world and travels an ever-changing ''last mile'' with the emergence of direct-to-home delivery models. Technology and market forces have redefined how foods go from farm to table as shown by the expansion of e-commerce and the use of new technologies to track foods and their storage conditions along the supply chain.

There will be significant innovation in the agriculture, food production, and food distribution systems in the next 10 years, which will continue to provide an even greater variety of food sources, food ingredients, and delivery conveniences for American consumers. With this ever-changing landscape, FDA must continue preparing to take advantage of new opportunities and address potential risks.

Since FSMA was signed into law in 2011, FDA has proposed and finalized critical regulations that have established science- and risk-based standards for the production, importation, and transportation of foods. FDA has also had great success leveraging technology to advance food safety, especially in the use of new analytical tools like Whole Genome Sequencing. However, a lot has changed since 2011.

When it comes to food traceability, many in the food system still utilize a largely paper-based based system of taking one step forward to identify where the food has gone and one step back to identify the source. The use of new and evolving digital technologies envisioned in the New Era of Smarter Food Safety will play a pivotal role in tracing the origin of a contaminated food to its source in minutes, or even seconds, instead of days or weeks. Access to information during an outbreak about the origin of contaminated food will facilitate more timely root cause analyses and enable FDA to prevent future contamination incidents.

The Agency will look at technologies and approaches that include those being used in society and business sectors all around us, such as distributed ledgers, sensors, the Internet of Things, and artificial intelligence. FDA will assess how these technologies could create a more digital, transparent, and safe food system while also addressing consumer demands for quick access to information about where their foods come from, how they are produced, and if the food is the subject of an ongoing recall.

As consumers are increasingly asking for food to be delivered to their homes, there are new methods, packaging materials, temperature control approaches, and delivery models in the e-commerce system. These evolving business models present food safety challenges, as well as novel considerations around regulatory framework and oversight at the federal, state, territorial, and local level.

The New Era of Smarter Food Safety is about more than technology. It is also about working within and outside of FDA to foster a food safety culture that transcends borders between the public and private sector, as well as geographic and commodity divides. The New Era of Smarter Food Safety is also about enhancing existing processes to make them more effective and efficient. FDA looks forward to participation in this effort by food companies and technology firms of all sizes, as well as state, territorial, local, and federal agencies and other stakeholders.

II. Topics for Discussion at the Public Meeting

The public meeting will begin with a plenary session, followed by breakout sessions that will discuss key topics relating to the New Era of Smarter Food Safety. These topics will include technologies and data streams that have the potential to greatly reduce the time it takes to trace the origin of a contaminated food to its source and how we might best use this information. We will talk about how we can use lessons learned from outbreaks to better inform and enhance our prevention efforts.

No matter how consumers get their food, whether they are ordering online or at their favorite restaurant, they deserve to have confidence in the safety of the food supply. We will talk about advancing the safety of both new business models, such as e-commerce and home delivery of foods, and traditional business models, such as retail food establishments. Perhaps the most fundamental topic that we will address is the need to support and strengthen food safety culture throughout the supply chain from farms to facilities through retail, which is the foundation of food safety management.

We encourage public comments and presentations at the public meeting. In submitting comments, data, and

information to the docket, please identify available references for the data and information, as well as the general category area and, if appropriate, the specific question listed below. We are starting with several focus areas: Traceability, smarter tools and approaches for prevention, the challenges of new business models and retail food safety, and support for the development of food safety cultures.

A. New and Evolving Digital Technologies Will Play a Pivotal Role in Tracing the Origin of a Contaminated Food to Its Source in Minutes, or Even Seconds, Instead of Days or Weeks

1. What are the most significant actions FDA could undertake to enable industry to enhance traceability across the entire global food supply chain?
2. How could FDA make it more likely that companies utilize new technologies to enhance the traceability of their products?
3. What can FDA do to facilitate and expedite outbreak-related communications between government agencies, industry, and consumers?
4. Are there mechanisms FDA could employ to incentivize adoption of real-time, end-to-end food traceability throughout the food sector?
5. What are the challenges to creating a more digital, traceable global food supply, and how might FDA approach this in a manner that creates shared value for all participants?

B. To Fully Realize a Preventive Controls System That Rapidly Incorporates New Knowledge, We Must Also Ask if We Can We Make Processes and Communications More Effective, Efficient, and in Some Cases, Simpler

1. What are the most significant actions FDA could undertake to promote and support the use of smarter tools for prevention?
2. What predictive analytical tools and data streams are best suited to helping identify a potential contamination event?
3. What further steps can be taken to advance the safety of domestic and foreign commodities that have been the subject of frequent contamination incidents?
4. In what ways can FDA support the use of environmental assessments and root cause analyses in industry prevention efforts?
5. Are there changes that FDA can and should make in the way in which it conducts environmental assessments and root cause analyses, and reports its findings to industry, to better facilitate their use in industry prevention efforts?

C. Evolving Business Models Present Food Safety Challenges as Well as Novel Considerations Around Regulatory Framework and Oversight at the Federal, State, Territorial, and Local Level

1. What are the most significant actions FDA could undertake to help ensure the safety of foods delivered under a variety of new business models, such as e-commerce?
2. What research is available or should be conducted to understand the potential health risks posed by foods provided by new business models, such as e-commerce?
3. Are there specific collaborations between FDA and industry that would help to ensure the safety of these foods?
4. What are the most significant actions that FDA, state, territorial, and local agencies, and industry could take to change practices in the retail food industry that present risks to public health?

D. We Want To Do More To Use and Leverage Proven Organizational Culture and Behavioral Science Principles and Techniques To Enhance Organizational and Employee Compliance With Desired Food Safety Practices and Behaviors

1. What are the most significant actions FDA could undertake to foster and support the development of food safety cultures globally?
2. How can FDA encourage and support companies in the development of food safety cultures throughout the supply chain?
3. What are the obstacles to creating food safety cultures throughout the supply chain?
4. Are there changes that FDA can and should take in how it approaches food safety to place further emphasis on prevention?

Approximately two weeks before the meeting, we will post the public meeting agenda and additional meeting materials on the internet at: *https://www.fda.gov/food/news-events-cfsan/workshops-meetings-webinars-food-and-dietary-supplements.* In addition to the opportunity to comment at the public meeting, there will be an opportunity for interested stakeholders to submit written comments following the meeting.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://www.fda.gov/food/news-events-cfsan/workshops-meetings-webinars-food-and-dietary-supplements.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability. Persons interested in attending this public meeting must register by 11:59 p.m. Eastern Time on October 11, 2019. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 8 a.m. We will let registrants know if registration closes before the day of the public meeting.

For questions about registering for the meeting or to register by phone, please contact Mark Gifford (see **FOR FURTHER INFORMATION CONTACT**).

If you need special accommodations due to a disability, please contact Juanita Yates, (see **FOR FURTHER INFORMATION CONTACT**) no later than October 2, 2019.

Requests for Oral Presentations: During online or telephone registration you may indicate if you wish to present during a public comment session or participate in a specific session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants. All requests to make oral presentations must be received by October 2, 2019. No commercial or promotional material will be permitted to be presented or distributed at the public meeting. Persons notified that they will be presenters are encouraged to arrive at the meeting room early and check in at the on-site registration table. Actual presentation times may vary based on how the meeting progresses in real time.

Persons attending FDA's meetings are advised that FDA is not responsible for providing access to electrical outlets.

Streaming Webcast of the public meeting: This public meeting will also be webcast. Webcast participants are asked to preregister at *https://www.fda.gov/food/news-events-cfsan/workshops-meetings-webinars-food-and-dietary-supplements.*

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/food/news-events-cfsan/workshops-meetings-webinars-food-and-dietary-supplements.*

Dated: September 12, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–20229 Filed 9–17–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, ZRG1 DDR–Y 07 October 11, 2019, Cambria Hotel Rockville, 1 Helen Heneghan Way, Rockville, MD 20850 which was published in the **Federal Register** on September 10, 2019, 84–FR PG 47528.

The meeting notice is amended to change the meeting time from 8:00 a.m.–10:00 a.m. to 11:00 a.m.–1:00 p.m. The location remains the same. The meeting is closed to the public.

Dated: September 12, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20119 Filed 9–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, Research Infrastructure for Centers Conducting Population Dynamics Science FY2019 (P2C), October 28, 2019, 08:00 a.m. to October 29, 2019, 05:00 p.m., Residence Inn Bethesda, which was published in the **Federal Register** on February 28, 2019, 84 FR 6808.

The date for this meeting has changed from October 28, 2019, 08:00 a.m. to October 29, 2019, 05:00 p.m., Residence Inn Bethesda to October 28, 2019, 08:00 a.m. to October 28, 2019, 05:00 p.m., Residence Inn Bethesda. The meeting is closed to the public.

Dated: September 12, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20120 Filed 9–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community-Level Health Promotion Study Section.

Date: October 21–22, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Cellular and Molecular Technologies Study Section.

Date: October 22–23, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–455–2364, *tatiana.cohen@nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: October 22–23, 2019.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton BWI (Baltimore), 1100 Old Elkridge Landing Road, Baltimore, MD 21090.

Contact Person: Robert Gersch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *robert.gersch@nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: October 22–23, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Technology Development Study Section.

Date: October 22–23, 2019.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Center, Gaithersburg, MD 20878.

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: October 22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Predoctoral Training in Advanced Data Analytics for Behavioral and Social Sciences Research.

Date: October 22, 2019.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: October 22, 2019.

Time: 1:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 12, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20118 Filed 9–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change for the meeting of the Biobehavioral and Behavioral Sciences Subcommittee, September 19, 2019, 8:00 a.m. to 6:00 p.m., Residence Inn Bethesda, which was published in the **Federal Register** on June 24, 2019, 84 FR 29529.

The meeting name has been corrected. The meeting is closed to the public.

Dated: September 12, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–20121 Filed 9–17–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Requirement for Certificates of Export for Importations of Steel Products of the Republic of Korea

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document provides notice that importations into the United States of steel products of the Republic of Korea subject to absolute quota limits must be presented with valid and properly executed certificates of exportation.

DATES: Certificates of exportation for importations into the United States of steel products of the Republic of Korea subject to absolute quota limits are required for such products entered, or withdrawn from warehouse, for consumption on or after October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Julia Peterson, Quota and Agriculture Branch, Trade Policy and Programs, (202) 384–8905, *HQQUOTA@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Absolute quotas are established by Presidential proclamations, Executive orders, and legislative enactments. *See* section 132.2(a) of title 19 of the Code of Federal Regulations (19 CFR 132.2(a)). On April 30, 2018, President Donald J. Trump signed Proclamation 9740 (83 FR 20683) imposing, among other things, absolute quota limits on certain steel products of the Republic of Korea, pursuant to U.S. Note 16(e), subchapter III, Chapter 99, Harmonized Tariff Schedule of the United States (HTSUS), and subheadings 9903.80.05 through 9903.80.58, HTSUS. Subsequently, on September 4, 2019, President Trump signed Proclamation 9777 (83 FR 45025), wherein clause 7 provides that where a government of a country identified in the superior text to subheadings 9903.80.05 through 9903.80.58, HTSUS, notifies the United States that it has established a mechanism for the certification of exports to the products covered by the quantitative limitations applicable to those subheadings, U.S. Customs and Border Protection (CBP) may require that importers of these products furnish relevant certification of export information in order to qualify for the treatment set forth in those subheadings. If CBP adopts such a requirement, clause 7 to Proclamation 9777 requires that CBP shall publish in the **Federal Register** notice of the requirement and procedures for the submission of relevant certification of export information. Moreover, clause 7 to Proclamation 9777 mandates that no article that is subject to the export certification requirement announced in such a notice may be entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date specified in such a notice, except upon presentation of a valid and properly executed certification of export.

The Republic of Korea is a government of a country identified in the superior text to subheadings 9903.80.05 through 9903.80.58, HTSUS. Furthermore, the Republic of Korea has notified the United States that it has established a mechanism for the certification of exports to the products covered by the quantitative limitations applicable to these subheadings, specifically in the form of official certificates of exportation issued by the Korea Iron and Steel Association, as authorized by the Republic of Korea. This document provides notice that CBP will require valid and properly executed certificates of exportation for importations into the United States of steel products of the Republic of Korea covered by the quantitative limitations applicable to subheadings 9903.80.05 through 9903.80.58, HTSUS, that are entered, or withdrawn from warehouse, for consumption on or after October 18, 2019. The subject importations will not be released unless the entry summaries are accompanied by valid and properly executed certificates of exportation, as described in this notice.

Importers are advised that only exporters may obtain valid and properly executed certificates of exportation, which exporters may apply for online via the website for the Korea Iron and Steel Association (*http://sq.kosa.or.kr/*). Importers should obtain these certificates of exportation from exporters and submit them to CBP with the entry summaries filed for their importations. For entries filed through ACE, additional guidance on the submission of the certificates of export is available in a draft portion of the CBP and Trade Automated Interface Requirements (CATAIR) for entry summary filings (specifically, within the draft chapter designated as the AE CATAIR), regarding the record entitled Importer's Additional Declaration Detail (*https://www.cbp.gov/trade/ace/catair*).

Dated: September 11, 2019.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2019–20186 Filed 9–17–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–28832; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before August 31, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 3, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 31, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

ARIZONA

Maricopa County

Jefferson Hotel, 101 S Central Ave. (1 E Jefferson St.), Phoenix, SG100004509

DISTRICT OF COLUMBIA

District of Columbia

Wardman Flats, Square 519 bounded by 3rd, 4th & R Sts. & Florida Ave. NW, Washington, SG100004500

MISSISSIPPI

Covington County

Mount Olive Historic District, Roughly bounded by the N & S sides of Main St., extending from the jct. of Jaynesville Rd. to Old Hwy 49, Mount Olive, SG100004507

Hinds County

Upper Midtown Historic District, Roughly bounded by Duncan Ave., N West St., McTyere Ave., & N Mill St., Jackson, SG100004503

Southwest Midtown Historic District, Roughly bounded by Whitfield St., Blair St., East Bell St., and North Mill St., Jackson, SG100004504

Jackson County

Evergreen Cemetery, 1200 Sunset Dr., Ocean Springs, SG100004506

Lafayette County

Avent Acres Neighborhood Historic District, Roughly bounded by Lamar Ave., rear property line of Oxford Apts., Douglas Dr., Williams & Sisk Ave., Oxford, SG100004508

Leflore County

Downtown Greenwood Historic District, Roughly bounded by Front St., River Rd., Lamar, St., McLemore St., Pelican St., Avenue F, Henry St., West Johnson St., Vardaman St., & Dewey St., Greenwood, SG100004502

Warren County

Rolling Acres Historic District, Elizabeth Circle & intersecting streets, Vicksburg, SG100004505

Authority: Section 60.13 of 36 CFR part 60.

Dated: September 3, 2019.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–20172 Filed 9–17–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1455–1457 (Preliminary)]

Polyethylene Terephthalate (PET) Sheet From Korea, Mexico, and Oman

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of Polyethylene Terephthalate (PET) sheet from Oman and Korea, provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2] The Commission further determines that imports of PET sheet from Mexico that are alleged to be sold in the United States at LTFV are negligible pursuant to section 771(24) of the Act, and its antidumping duty investigation with regard to PET sheet from Mexico is thereby terminated pursuant to section 703(a)(1) of the Act.[3]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On July 9, 2019, Advanced Extrusion, Inc., Rogers, Minnesota; Ex-Tech Plastics, Inc., Richmond, Illinois; and Multi-Plastics Extrusions, Inc., Hazleton, Pennsylvania, filed petitions

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Polyethylene Terephthalate Sheet From the Republic of Korea, Mexico, and the Sultanate of Oman: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 44854, August 27, 2019.

[3] Commissioner Randolph J. Stayin voted in the affirmative with respect to all investigations.

with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of PET sheet from Korea, Mexico, and Oman. Accordingly, effective July 9, 2019, the Commission, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), instituted antidumping duty investigation Nos. 731–TA–1455–1457 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 15, 2019 (84 FR 33785). The conference was held in Washington, DC, on July 30, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel. A revised schedule was published on August 6, 2019 (84 FR 38296).

The Commission made these determinations pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determinations in these investigations on September 13, 2019. The views of the Commission are contained in USITC Publication 4970 (September 2019), entitled *Polyethylene Terephthalate (PET) sheet from Korea, Mexico, and Oman Investigation Nos. 731–TA–1455–1457 (Preliminary).*

By order of the Commission.
Issued: September 13, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–20190 Filed 9–17–19; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 18, 2019. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2020–004

1. *Applicant:* Leidos Innovations Corporation, 7400 South Tucson Way, Centennial, CO 80112.

Activity for Which Permit is Requested: Waste Management. The applicant, Leidos Innovations Corporations (hereafter ''Leidos'') proposes to conduct waste management activities associated with the implementation of the United States Antarctic Program (USAP). The USAP Master Waste permit would apply to all USAP activities, including major reconstruction and modernization efforts, conducted by all organizations supporting or supported by the Program. Leidos and other supporting organizations provide broad-based logistical support, technical support, and transportation services to the USAP. This would include the transport of both hazardous and non-hazardous waste from Antarctica to the United States. Leidos would include procure, transport, and track materials containing designated pollutants required for USAP operations and for NSF-supported grantees. Leidos would be responsible for fuel operations including fuel storage, distribution, and resupply; and record-keeping of fuel use. Leidos would collect, store, and ship both hazardous and non-hazardous waste materials and would be responsible for the final disposition of these materials upon return to the United States. Leidos would provide training and technical guidance to enhance the safety and effectiveness of U.S. waste management practices in Antarctica.

Location: Antarctica.

Dates of Permitted Activities: October 1, 2019–September 30, 2024.

Permit Application: 2020–006

2. *Applicant:* John Kennedy, 917 Porphyry, Ophir, CO 81426.

Activity for Which Permit is Requested: Waste Management. The applicant proposes to operate a sailing yacht, conduct shore excursions, and operate a remotely piloted aircraft system in the Antarctic Peninsula region. The yacht would carry up to 1200 liters of diesel fuel in a combination of internal and external storage tanks, up to 50 liters of gasoline, and two, 8-kg bottles of propane. A spill kit and absorbent pads would be available during all fueling and fuel transfers. Garbage and food waste, including poultry products, would be stored onboard the vessel and disposed of outside Antarctica. Human waste generated during shore excursions would be contained, stored on the vessel, and disposed of outside Antarctica. The applicant would operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to aid in navigation and to collect footage of the Antarctic. The quadcopter would not be flown over wildlife, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by a pilot with extensive experience and flights would not occur if the aircraft cannot be flown in GPS mode. Several measures would be taken to prevent against loss of the quadcopters including painting them a highly visible color; only flying when the wind is less than 20 knots; terminating flights with at least 40% battery life remaining; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and quadcopter does not exceed visual line of sight. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the vessel, conducting shore excursions, or operating the RPAS.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: December 1, 2019–February 15, 2023.

Permit Application: 2020–009

3. *Applicant:* Robin West, Director of Expedition Operations, Onboard Revenue, Seabourn Quest, Seabourn Cruise Line Ltd., 450 Third Ave. W, Seattle, WA 98119.

Activity for Which Permit is Requested: Waste Management. The applicant proposes to operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader. Several measures would be taken to prevent against loss of the quadcopter including painting them a highly visible color; only flying when the wind is less than 25 knots; flying for only 15 minutes at a time to preserve battery life; having prop guards on propeller tips, a flotation device if operated over water, and an ''auto go home'' feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and quadcopter does not exceed an operational range of 500 meters. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location: Antarctic Peninsula Region.

Dates of Permitted Activities: November 1, 2019–March 31, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2019–20143 Filed 9–17–19; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 18, 2019. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2020–005

1. *Applicant:* Grant Ballard, Point Blue Conservation Science, 3820 Cypress Dr #11, Petaluma, CA 94954.

Activity for Which Permit is Requested: Take, Harmful Interference, Enter Antarctic Specially Protected Areas (ASPAs). The applicant proposes to enter ASPAs at Cape Royds, ASPA 121, and Cape Crozier, ASPA 124, to conduct surveys of the Adelie penguin colonies via remotely piloted aircraft systems (RPAS). The areas would be accessed by helicopters and the ASPAs would be entered on foot. In order to survey the large colonies in a timely manner, the applicant proposes to employ multiple, self- and collectively-aware remotely piloted aircraft simultaneously. The RPAS will be piloted by a trained, experienced, and certified operator and the operations will also involve additional visual observers. Test flights of the system will be conducted prior to Antarctic deployment and in Antarctica in an area in which there is minimal risk to wildlife or sensitive environments. For the surveys, the RPAS launch site would be at least 20 meters away from nesting birds and the RPAS would be operated at altitudes of 30–80 meters above ground level to help ensure minimal disturbance. Surveys at Cape Crozier have the potential to disturb south polar skuas nesting near the penguin colony. Images obtained from the surveys would be used to estimate the number of nesting adults and chicks, as well as nesting density.

Location: ASPA 121, Cape Royds, Ross Island; ASPA 124, Cape Crozier, Ross Island.

Dates of Permitted Activities: November 10, 2019—September 30, 2020.

Permit Application: 2020–007

2. *Applicant:* Peter West, National Science Foundation, Office of Polar Programs, 2415 Eisenhower Ave, Alexandria VA 22314.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Areas (ASPAs). The National Science Foundation, as U.S. taxpayer supported government agency, routinely selects members of the U.S. news media to visit Antarctica and report on the science the foundation facilitates there. The newsgathering process requires journalists to visit specific sites and to speak with the researchers conducting science there. Any interviews, photographs or video gathered during visits to ASPAs would be used to inform the general public about the importance of the science conducted on the continent. Visits to the ASPAs listed in this application would take place in conjunction with valid scientific activities, for the express purposes of gathering images, footage, or information on scientific research, general scenic locations, and interviews with scientists working in the field. Journalists visiting Antarctica will be accompanied at all times by an NSF staff ''escort''. The escort will be a person who has years of experience working with field parties, with scientists and with journalists. The escort is cognizant of—and will follow the requirements contained in—the ASPA management plans and the Antarctic Conservation Act. They will ensure that every effort is made to practice ''low impact'' documentary procedures with regard to the natural environment as well as to adhere to all USAP operations and procedures.

Location: ASPA 121, Cape Royds, Ross Island; ASPA 122, Arrival Heights, Hut Point Peninsula, Ross Island; ASPA 124, Cape Crozier, Ross Island; ASPA 131, Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land; ASPA 155, Cape Evans, Ross Island; ASPA 157, Backdoor Bay, Cape Royds, Ross Island; ASPA 158 Hut Point, Ross Island; ASPA 172, Lower Taylor Glacier and Blood

Falls, Taylor Valley, McMurdo Dry Valleys, Victoria Land.

Dates of Permitted Activities: October 31—December 31, 2019.

Permit Application: 2020–008

3. *Applicant:* Robert Sanders, Department of Biology, Temple University, 1900 N 12th Street, Philadelphia, PA 19122.

Activity for Which Permit is Requested: Introduce Non-indigenous Species into Antarctica. The applicant would use cultures of the bacteria as a food source during a study of Antarctic mixotrophic phytoplankton aboard the research vessel Nathaniel B. Palmer. The bacterial culture is a non-pathogenic marine species (*Photobacterium angustum*) obtained from American Type Culture Collection. This bacterial species would be used as it has been shown to have the ability to incorporate a thymidine substitute that can be used to identify which phytoplankton have ingested the bacteria. The feeding experiments would be conducted in sealed plastic containers kept isolated from the environment. At the conclusion of the experiments, any sample or culture remaining, including filtered seawater, would be destroyed by autoclaving on the ship. Supplies and equipment would be sterilized at the end of each experiment by autoclaving or using ethanol. The applicant and permit agents are experienced in using sterile techniques and in maintaining safe practices with microbial cultures.

Location: West Antarctic Peninsula region.

Dates of Permitted Activities: November 1–December 28, 2019.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2019–20142 Filed 9–17–19; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Education and Human Resources (#1119)

Date and Time: October 29, 2019; 8:30 a.m.—5:00 p.m.

Place: Holiday Inn Alexandria—Carlyle, 2460 Eisenhower Avenue, Alexandria, VA 22314

To attend the meeting in person, all visitors must contact the Directorate for Education and Human Resources at least 48 hours prior to the meeting to arrange for a visitor's badge. All visitors must access NSF via the Visitor Center entry adjacent to the south building entrance on Eisenhower Avenue on the day of the meeting to receive a visitor's badge. It is suggested that visitors allow time to pass through security screening.

Type of Meeting: Open

Contact Person: Keaven M. Stevenson, National Science Foundation, 2415 Eisenhower Avenue, Room C11001, Alexandria, VA 22314; (703) 292–8600/ *kstevens@nsf.gov*

Summary of Minutes: Minutes and meeting materials will be available on the EHR Advisory Committee website at *http://www.nsf.gov/ehr/advisory.jsp* or can be obtained from Dr. Nafeesa Owens, National Science Foundation, 2415 Eisenhower Ave., Room C11045, Alexandria, VA 22314; (703) 292–8600; *nowens@nsf.gov.*

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda

Morning Sessions

- Remarks from the EHR Advisory Committee Chair and EHR Assistant Director
- Federal STEM Education 5-Year Strategic Plan
- NSF BIG IDEAS
- Revisiting EHR's Strategic Revisioning Report

Afternoon Sessions

- EHR AC Subcommittee Updates
- EHR Response to Graduate Education AC Subcommittee Report
- Discussion with Chief Operating Officer, F. Fleming Crim

Final agenda can be located at the EHR AC website: *https://www.nsf.gov/ehr/advisory.jsp*

Dated: September 13, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019–20194 Filed 9–17–19; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received and permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated and permits issued under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification and permit issued.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8224; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection.

On November 3, 2015, the National Science Foundation issued an Antarctic Conservation Act permit to Michael J. Polito for take, import into the USA, export from the USA, and entry into Antarctic Specially Protected Areas. The permit holder and his agents are permitted to collect sediments and organic remains from active and abandoned penguin colonies and to collect feather samples from gentoo, chinstrap, and Adelie penguins. The permit holder and agents are also permitted to enter ASPAs in the South Orkney Islands, the South Shetland Islands, the Antarctic Peninsula regions, the Ross Sea region, the Victoria Land Coast, the McMurdo Station area, and East Antarctica, as listed in the issued permit.

A recent modification of the permit, dated November 3, 2017, allowed the salvage whole or partial specimens of native Antarctic birds and whole eggs that are found non-viable on beaches and at bird colonies. All specimens would be imported into the USA for identification and analysis. The ultimate disposition of the specimens would be at academic institutions or museums.

Now the permit holder proposes a permit modification to extend the expiration date of the permit until August 31, 2020.

Dates of Permitted Activities: September 1, 2019 to August 31, 2020.

The permit modification was issued on September 12, 2019.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2019–20141 Filed 9–17–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–18–040; NRC–2019–0172]

Order Prohibiting Involvement in NRC-Licensed Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order prohibiting involvement in NRC-licensed activities to Mr. Thomas Summers. The NRC determined that Mr. Thomas Summers engaged in deliberate misconduct that caused Florida Power & Light to be in violation of 10 CFR 50.7, ''Employee protection,'' and 10 CFR 50.9, ''Completeness and accuracy of information.''

DATES: The Order prohibiting involvement in NRC-licensed activities was issued on September 12, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0172 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0172. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Order is available in ADAMS under Accession No. ML19234A336.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: David Jones, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9525, email: *david.jones@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 13th day of September 2019.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director, Office of Enforcement.

Attachment—Order Prohibiting Involvement in NRC-Licensed Activities

United States of America Nuclear Regulatory Commission

In the Matter of Thomas Summers

IA–18–040

Order Prohibiting Involvement in NRC-Licensed Activities

I.

Thomas Summers was employed as Regional Vice President—Operations and then as Corporate Support Vice President at NextEra Energy's Florida Power & Light (FPL). NextEra/FPL holds St. Lucie Unit 1 and 2 License Nos. DPR–67 and NPF–16 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), on March 1, 1976 and April 6, 1983. The license authorizes the operation of St. Lucie Nuclear Plant (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Jensen Beach, Florida.

II.

Two investigations were conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) related to FPL's St. Lucie Nuclear Plant. The purposes of the investigations were to determine whether a contract employee at St. Lucie Nuclear Plant was the subject of employment discrimination in violation of Title 10 of the Code of Federal Regulations (10 CFR) 50.7, ''Employee protection'' (OI Report No. 2–2017–024); and to determine whether a FPL senior licensee executive, or potentially others, deliberately provided the NRC with incomplete and inaccurate information in violation of 10 CFR 50.9, ''Completeness and accuracy of information'' (OI Report No. 2–2019–009).On August 24, 2015,

For OI Report No. 2–2017–024, NRC determined that Mr. Thomas Summers, as the former FPL Regional Vice President (VP)—Operations, deliberately cancelled a contract employee's assignment during the week of March 13, 2017. The cancellation occurred, in part, because the contract employee entered a concern into St. Lucie's corrective action program on March 13, 2017.

In a letter dated October 19, 2018, Agencywide Documents Access and Management System (ADAMS) Accession No. ML18283B007, the NRC notified Mr. Thomas Summers of an apparent violation of 10 CFR 50.5, ''Deliberate misconduct'', which the NRC was considering for escalated enforcement action in accordance with the NRC Enforcement Policy. This rule prohibits an employee or contractor of an NRC licensee (FPL) from engaging in deliberate misconduct that causes an NRC licensee to be in violation of any rule, regulation, or order; or any term, condition, or limitation of a license issued by the Commission. In the letter, the NRC requested your participation in a predecisional enforcement conference (PEC) to address the apparent violation. On February 6, 2019, the NRC held a PEC at the NRC Headquarters office in Rockville, Maryland, with Mr. Thomas Summers and his attorney to discuss the apparent violation.

OI's investigation documented that Mr. Thomas Summers, as the former FPL Regional VP—Operations sent an email to the Framatome VP of Outage Services on March 14, 2017. The body of your email included the text of the condition report that was submitted by the contract employee on March 13, 2017, and a related question regarding the condition report. The evidence documented that Mr. Thomas Summers and the Framatome VP acknowledged the sending, and the receipt, of the March 14th email. Additionally, the evidence indicated that you initiated a subsequent phone discussion on March 14th with the Framatome VP of Outage Services which included discussing the contract employee's reassignment to Turkey Point Nuclear Plant. The temporal proximity of the individual's submission of the condition report and the initiation of the adverse action by Mr. Summers, an FPL executive was deemed a discriminatory act.

During the PEC Mr. Thomas Summers denied violating 10 CFR 50.5, ''Deliberate misconduct'', and denied that FPL violated 10 CFR 50.7, ''Employee protection.'' Generally, Mr. Thomas Summers asserted that the protected activity was not a contributing factor to any adverse personnel action

and that the NRC's only basis was ''temporal proximity'', and that the removal of the individual from the Turkey Point Nuclear Plant assignment was justified by legitimate safety (business) reasons. The NRC's determination that a violation occurred was based on factors such as: The individual's subordinates, coworkers, and superiors, both at Framatome and FPL, almost universally spoke very highly of him; neither you, FPL, or Framatome produced sufficient evidence to indicate that his performance, or the performance of his reactor services team, was a significant concern during the refueling outage; and, the staff noted that your testimony differed significantly from the testimony of other witnesses, including inconsistencies that undercut your credibility and specifically discredited your assertions that the individual's removal from the Turkey Point refueling outage was unrelated to his protected activities. The NRC determined that the assertion that the contractor's reassignment was justified by legitimate safety (business) reasons was not reasonable because of evidence which indicated that the 2017 spring refueling outage was the shortest outage for St. Lucie in many years and that the reactor services portion of the outage, managed by the contract employee, incurred only minimal scheduling delays. Lastly, the NRC determined that the contractor did suffer an adverse action when he was removed from the Turkey Point outage. When the contractor was directed not to go to Turkey Point, it was not clear if Framatome would provide an alternative work assignment or if such an alternative would provide comparable income. The individual is a part-time Framatome employee and is only paid when he works. A reasonable person would view the cancellation of the workers pre-scheduled transfer as an adverse action and one that could potentially chill others who raise nuclear safety concerns.

Accordingly, the NRC determined that Mr. Thomas Summers actions were deliberate and a violation of 10 CFR 50.5, ''Deliberate misconduct''. The NRC considers deliberate violations of 10 CFR 50.7, ''Employee protection'', significant because of the potential that individuals might not raise safety issues for fear of retaliation.

For OI Report No. 2–2019–009, NRC determined that Mr. Thomas Summers, as the former FPL Corporate Support VP, engaged in deliberate misconduct that caused FPL to be in violation of 10 CFR 50.9, ''Completeness and accuracy of information''. On October 19, 2018 (see ADAMS Accession No. ML18346A182), the NRC informed Mr. Thomas Summers of its enforcement deliberations for OI Report No. 2–2017–024. Within a week of this date, Mr. Thomas Summers presented to FPL an outage journal that contained information regarding the discrimination concern. This journal had not been presented during FPL's employee concerns program investigation (Spring of 2017) or during Mr. Summers OI interview in February 2018 (OI Report No. 2–2017–024). In a letter dated December 10, 2018, (ADAMS Accession No. ML18346A182) FPL submitted the photocopied journal to the NRC. FPL's letter stated that the journal contained material that was highly relevant to the facts in OI Report No. 2–2017–024. Subsequently, in a letter dated January 17, 2019, ADAMS Accession No. ML19024A085, FPL stated that they had developed cause to question the authenticity of the outage journal provided by Mr. Thomas Summers.

In a letter dated July 1, 2019, ADAMS Accession No. ML19172A284, the NRC notified Mr. Thomas Summers of an apparent violation of 10 CFR 50.5, ''Deliberate Misconduct,'' which the NRC considered for escalated enforcement action in accordance with the NRC Enforcement Policy. In the letter, the NRC offered Mr. Thomas Summers the opportunity to participate in a PEC to address the apparent violation. On July 29, 2019, the NRC held a PEC at the NRC Headquarters office in Rockville, Maryland, with Mr. Thomas Summers and his attorney to discuss the apparent violation.

OI's investigation determined that Mr. Thomas Summers deliberately submitted a journal to FPL which contained incomplete and inaccurate information. Had the inaccurate information not been detected it would have adversely impacted NRC's enforcement deliberations for the St. Lucie discrimination case (OI Report No. 2–2017–024). OI's investigation documented that previously, Mr. Thomas Summers claimed to have located the journal at St. Lucie Nuclear Plant shortly after receipt of the apparent violation for the discrimination concern on October 19, 2018. A review of access authorization badge activity at St. Lucie Nuclear Plant indicated that Mr. Thomas Summers had not entered the plant. When confronted, Mr. Thomas Summers admitted to providing a false narrative about the discovery of the journal at St. Lucie Nuclear Plant. The results of a forensics analysis, procured by FPL, contradicted Mr. Thomas Summers claim that pertinent journal entries for the discrimination case were made in February and March of 2017. The forensics analysis, conducted in January 2019, indicated that the journal entries were less than a year old (*i.e.,* as compared to the expected two years). The analysis included testing of pages that contained information pertinent to the discrimination case. Despite Mr. Thomas Summers testimony that the journal is an accurate record of events; the documentary and testimonial evidence obtained by OI during the investigation demonstrated that you deliberately provided incomplete and inaccurate information to FPL to influence an NRC proceeding, namely the upcoming St. Lucie discrimination case PECs to avoid potential NRC enforcement actions.

During the PEC Mr. Thomas Summers denied violating 10 CFR 50.5, ''Deliberate misconduct'' and 10 CFR 50.9, ''Completeness and accuracy of information''. Generally, Mr. Summers asserted that the journal was an accurate reflection of activities during the St. Lucie Nuclear Plant refueling outage. Additionally, Mr. Summers asserted that the journal contained personal notes and that it was not an official company document. The NRC determined that Mr. Summers PEC presentation did not supplant the investigative evidence developed by the NRC. The NRC determined that the journal was material because it was provided to FPL in response to you receiving an apparent violation, and contained personnel performance information for a contractor of an NRC licensee (FPL) directly relevant to that apparent violation.

Accordingly, the NRC determined that Mr. Summers actions were deliberate and that 10 CFR 50.5, ''Deliberate misconduct'' was violated. The NRC considers the deliberate violation of 10 CFR 50.9, ''Completeness and accuracy of information'', significant because of Mr. Thomas Summers attempt to unduly influence the NRC's deliberations for the discrimination case discussed above.

III.

Based on the above, the NRC determined that Mr. Thomas Summers, as Regional Vice President—Operations, and as Corporate Support Vice President, engaged in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 50.7, ''Employee Protection'', and 10 CFR 50.9, ''Completeness and accuracy of information''.

Consequently, given the significance of the underlying issues, Mr. Summers position within the FPL organization

that had a very broad sphere of influence, and the deliberate nature of the actions; the NRC lacks the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Thomas Summers were permitted at this time to be involved in NRC-licensed activities. Therefore, Thomas Summers is prohibited from any involvement in NRC-licensed activities for a period of five years from the effective date of this Order. Additionally, Thomas Summers is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, I find that the significance of Mr. Thomas Summers conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV.

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 50.5. IT IS HEREBY ORDERED, EFFECTIVE UPON THE DATE OF ISSUANCE, THAT:

1. Mr. Thomas Summers is prohibited for five years, from the effective date of this Order, from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Thomas Summers is currently involved with an NRC licensee engaged in any other NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this order to the employer.

3. Mr. Thomas Summers shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities, as defined in paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Thomas Summers shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Thomas Summers of good cause.

V.

In accordance with 10 CFR 2.202, Mr. Thomas Summers must submit a written answer to this Order under oath or affirmation within 20 days of its publication in the **Federal Register**. Mr. Thomas Summers failure to respond to this Order could result in additional enforcement action in accordance with the Commission's Enforcement Policy. In addition, Mr. Thomas Summers and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and include a statement of good cause for the extension.

VI.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR part 2, subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public website at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the website, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a web browser plug-in from the NRC website. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the

document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Mr. Thomas Summers requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by Mr. Thomas Summers or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 12th day of September 2019.

For the Nuclear Regulatory Commission.

George A. Wilson,

Director Office of Enforcement.

[FR Doc. 2019–20168 Filed 9–17–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

667th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on October 2–5, 2019, Two White Flint North, 11545 Rockville Pike, ACRS Conference Room T2D10, Rockville, MD 20852.

Wednesday, October 2, 2019, Conference Room T2D10

1:00 p.m.–1:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:05 p.m.–2:30 p.m.: Advanced Boiling Water Reactor (ABWR) Design Certification Renewal (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff and GEH regarding the subject topic.

2:30 p.m.–4:30 p.m.: FRAMATOME's Topical Report, RAMONA5 for Anticipated Transient Without SCRAM (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and Framatome regarding the subject topic. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

4:45 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would invasion of personal privacy].

Thursday, October 3, 2019, Conference Room T2D10

8:30 a.m.–10:00 a.m.: Advanced Reactor Computer Codes (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the subject topic.

10:15 a.m.–11:15 a.m.: NuScale Design Certification Application Safety Evaluation (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the need for further briefings by the staff to support the Committee's Review—(Chapters 11 and 17). Specific chapters are subject to change. Please call 301–415–2241 for the latest information. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)].

11:15 a.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

Friday, October 4, 2019, Conference Room T2D10

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Retreat (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings and retreat items. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.] [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

10:15 a.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

Saturday, October 5, 2019, Conference Room T2D10

8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866–822–3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Ms. Paula Dorm, ACRS Audio Visual Technician (301–415–7799), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before

the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: September 12, 2019.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2019–20122 Filed 9–17–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0233]

Pressurized Water Reactor Control Rod Ejection and Boiling Water Reactor Control Rod Drop Accidents; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of reissuance of draft regulatory guide; extension of comment period; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** on July 30, 2019, regarding reissuing for public comment draft regulatory guide (DG), DG–1327, ''Pressurized Water Reactor Control Rod Ejection and Boiling Water Reactor Control Rod Drop Accidents.'' This action is necessary to correct the NRC Agencywide Documents Access and Management System (ADAMS) number of the DG for which NRC is soliciting comments. The public comment period was originally scheduled to close on October 30, 2019. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date of comments requested in the document published on July 30, 2019 (84 FR 36961) is extended. Comments should be filed no later than November 18, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2016–0233. Address questions about docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Paul Clifford, Office of Nuclear Reactor Regulation, telephone: 301–415–4043, email: *Paul.Clifford@nrc.gov* and Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–415–3317; email: *Edward.ODonnell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0233 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–2016–0233.
- *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.* DG–1327 is available in ADAMS under Accession No. ML18302A106.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0233 in your comment submission.

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

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

II. Discussion

On July 30, 2019 (84 FR 36961), the NRC solicited comments on DG–1327, ''Pressurized Water Reactor Control Rod Ejection and Boiling Water Reactor Control Rod Drop Accidents.'' This document corrects the ADAMS Accession No. for DG–1327. The correct ADAMS Accession No. for DG–1327 is ML18302A106.

The public comment period was originally scheduled to close on October 30, 2019. The NRC has decided to extend the public comment period on this document until November 18, 2019, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, this 12th day of September, 2019.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2019–20133 Filed 9–17–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0254, Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request RI 20–123, Request for Case Review for Enhanced Disability Annuity Benefit.

DATES: Comments are encouraged and will be accepted until October 18, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0254) was previously published in the **Federal Register** on February 4, 2019 at 84 FR 1524, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 20–123 is available only on the OPM website. It is used by retirees separated for disability and the survivors of retirees separated for disability to request that Retirement Operations review the computations of disability annuities to include the formulae provided in law for individuals who performed service as law enforcement officers, firefighters, nuclear materials carriers, air traffic controllers, Congressional employees, and Capitol and Supreme Court police. When responses are received, action is taken to review the annuity computation and, if the respondent is entitled to an increased benefit, the benefit is authorized.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request for Case Review for Enhanced Disability Annuity Benefit.

OMB Number: 3206–0254.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 100.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 8.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2019–20139 Filed 9–17–19; 8:45 am]

BILLING CODE 6325–38–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 18, 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 12, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 550 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–197, CP2019–220.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–20134 Filed 9–17–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service 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 18, 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 12, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 65 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–199, CP2019–222.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–20136 Filed 9–17–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service 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 18, 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 12, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 118 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–198, CP2019–221.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–20132 Filed 9–17–19; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Medical Reports; OMB 3220–0038.

Under sections 2(a)(1)(iv) and 2(a)(1)(v) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), annuities are payable to qualified railroad employees whose physical or mental condition makes them unable to (1) work in their regular occupation (occupational disability) or (2) work at all (total disability). The requirements for establishing disability and proof of continuing disability under the RRA are prescribed in 20 CFR 220.

Annuities are also payable to (1) qualified spouses and widow(ers) under sections 2(c)(1)(ii)(C) and 2(d)(1)(ii) of the RRA who have a qualifying child who became disabled before age 22; (2) surviving children on the basis of disability under section 2(d)(1)(iii)(C), if the child's disability began before age 22; and (3) widow(er)s on the basis of disability under section 2(d)(1)(i)(B). To meet the disability standard, the RRA provides that individuals must have a permanent physical or mental condition that makes them unable to engage in any regular employment.

Under section 2(d)(1)(v) of the RRA, annuities are also payable to remarried widow(er)s and surviving divorced spouses on the basis of, among other things, disability or having a qualifying disabled child in care. However, the disability standard in these cases is that found in the Social Security Act. That is, individuals must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. The RRB also determines entitlement to a Period of Disability and entitlement to early Medicare based on disability for qualified claimants in accordance with Section 216 of the Social Security Act.

When making disability determinations, the RRB needs evidence from acceptable medical sources. The RRB currently utilizes Forms G–3EMP, Report of Medical Condition by Employer; G–197, Authorization to Disclose Information to the Railroad Retirement Board; G–250, Medical Assessment; G–250A, Medical Assessment of Residual Functional Capacity; G–260, Report of Seizure Disorder; RL–11B, Disclosure of Hospital Medical Records; RL–11D, Disclosure of Medical Records from a State Agency; RL–11D1, Request for Medical Evidence from Employers, and RL–250, Request for Medical Assessment, to obtain the necessary medical evidence. One response is requested of each respondent. Completion is required for all forms to obtain benefits except Form RL–11D1, which is voluntary. The RRB proposes minor non-burden revisions to all forms, except Form RL–11D1.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–3EMP	600	10	100
G–197	6,000	10	1,000
G–250	11,950	30	5,975
G–250A	50	20	17
G–260	100	25	42
RL–11B	5,000	10	833
RL–11D	250	10	42
RL–11D1	600	20	200
RL–250	11,950	10	1,992
Total	36,500		10,201

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2019–20125 Filed 9–17–19; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 48672, September 16, 2019.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, September 18, 2019 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, September 18, 2019 at 10:00 a.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: September 16, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–20332 Filed 9–16–19; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86956; File No. SR–CboeBZX–2019–081]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Securities Listed on the Exchange, as Set Forth in BZX Rule 14.13, Company Listing Fees

September 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13, Company Listing Fees. Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,[3] which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange traded products (''ETPs'')[4] on the Exchange.[5] On July 3, 2017, the Exchange made certain changes to Rule 14.13 such that there were no entry fees or annual fees for ETPs listed on the Exchange.[6] Effective January 1, 2019, the Exchange made certain changes to Rule 14.13 in order to charge an entry fee for ETPs that are not Generically-Listed ETPs[7] and to add annual listing fees for ETPs listed on the Exchange.[8] The Exchange then made certain additional modifications to Rule 14.13 in May 2019 related to listings that are transferring to the Exchange and to make certain changes to the fees associated with Linked Securities.[9] [10] The Exchange submits this proposal in order to amend Rule 14.13(b)(2) in order to create annual pricing cap for Outcome Strategy Series, as defined below, that are listed on the Exchange. As part of this proposal to create a fee cap for Outcome Strategy Series, the Exchange is also proposing to make a corresponding numbering change to make current Rule 14.13(b)(2)(iv) become Rule 14.13(b)(2)(v) and to add language to proposed Rule 14.13(b)(2)(v) in order to make clear that ETPs that are subject to the new pricing for Outcome Strategy Series would not be subject to the fees applicable under Rule 14.13(b)(2)(v) in the same way that Legacy Listings, Auction Fee Listings, and Transfer Listings are not subject to such fees.

Currently, all ETPs listed on the Exchange are subject to annual fees applicable under Rule 14.13(b)(2)(C)(i)–(iv). Newly listed ETPs receive reduced and prorated annual rates,[11] certain other listings receive reduced rates,[12] others receive a waiver of annual fees based on the auction volume of an issuer's ETPs listed on the Exchange,[13] and all other ETPs are subject to pricing based on the consolidated average daily volume of the ETP in the fourth quarter of the preceding calendar year. As noted above, the Exchange is proposing to create a cap on annual fees where an issuer lists a series of ETPs that are each designed to provide (i) a pre-defined set of returns; (ii) over a specified outcome period; (iii) based on the performance of the same underlying instrument; and (iv) each employ the same outcome strategy for achieving the pre-defined

[3] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] As defined in Rule 11.8(e)(1)(A), the term ''ETP'' means any security listed pursuant to Exchange Rule 14.11.

[5] *See* Securities Exchange Act Release No. 66422 (February 17, 2012), 77 FR 11179 (February 24, 2012) (SR–BATS–2012–010).

[6] *See* Securities Exchange Act Release No. 81152 (July 14, 2017), 82 FR 33525 (July 20, 2017) (SR–BatsBZX–2017–45).

[7] As defined in Rule 14.13(b)(1)(C)(i), the term ''Generically-Listed ETPs'' means Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities, and Currency Trust Shares that are listed on the Exchange pursuant to Rule 19b–4(e) under the Exchange Act and for which a proposed rule change pursuant to Section 19(b) of the Exchange Act is not required to be filed with the Commission.

[8] *See* Securities Exchange Act Release No. 83597 (July 5, 2018), 83 FR 32164 (July 11, 2018) (SR–CboeBZX–2018–46).

[9] As defined in Rule 14.11(d), the term ''Linked Securities'' includes any product listed pursuant to Rule 14.11(d), but specifically includes Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities.

[10] *See* Securities Exchange Act Release No. 85881 (May 16, 2019), 84 FR 23607 (May 22, 2019) (SR–CboeBZX–2019–042).

[11] Pursuant to Rule 14.13(b)(2)(C)(ii), where an ETP first lists on the Exchange or has been listed for fewer than three calendar months on the ETP's first trading day of the year (a ''New Listing''), such ETP will have an annual listing fee of $4,500. Upon initial listing on the Exchange, the annual listing fee applicable to New Listings will be prorated based on the number of trading days remaining in the calendar year, except that Transfer Listings will not be subject to an Annual Fee for the remainder of the calendar year following the date of listing on the Exchange.

[12] Pursuant to Rule 14.13(b)(2)(C)(i), where an ETP was listed on the Exchange prior to January 1, 2019 (a ''Legacy Listing'') or is a Transfer Listing, such ETP will have an annual listing fee of $4,000.

[13] Pursuant to Rule 14.13(b)(2)(C)(iii), where the average daily auction volume combined between the opening and closing auctions on the Exchange across all of an issuer's ETPs listed on the Exchange exceeds 500,000 shares (an ''Auction Fee Listing''), there is no annual listing fee for any of the issuer's ETPs listed on the Exchange.

set of returns (each an ''Outcome Strategy ETP'' and, collectively, an ''Outcome Strategy Series''). The Exchange is proposing that such annual fees will be capped at $16,000 per year.

Outcome Strategy ETPs

The Exchange currently lists a total of 18 Outcome Strategy ETPs from 3 separate Outcome Strategy Series. Outcome Strategy ETPs are ETPs that are designed to provide a particular set of returns over a specified outcome period based on the performance of an underlying instrument during the ETP's outcome period.[14] As an example, an Outcome Strategy ETP would include an ETP that employs the following strategy (the ''Buffer Strategy''): the ETP seeks to provide investment returns that match the gains of a particular index (the ''Reference Index'') up to a maximized annual return (the ''Cap Level'') (for the example below, 10%) while guarding against certain declines in that same underlying index (the ''Buffer Level'') (for the example below, 15%) over a particular period of time (the ''Outcome Period'') (for the example below, July 1st through June 30th). If over the course of the one-year Outcome Period from July 1st to June 30th, the Reference Index increases in value, the ETP would appreciate by approximately the same amount, up to the 10% Cap Level. If over the course of the Outcome Period, the Reference Index decreases in value by an amount equal to or less than the 15% Buffer Level, then the ETP would provide an approximate total return of zero. If over the course of the Outcome Period, the Reference Index decreases in value by an amount greater than the 15% Buffer Level, then the ETP would decrease in value by approximately the same percentage as the Reference Index, minus the 15% Buffer Level (if the Reference Index decreased by 20%, subtract the 15% Buffer Level, so the ETP would decrease by approximately 5%). Such outcomes would only apply for the Outcome Period from July 1st through June 30th and the ETP would reset at the end of the Outcome Period in order to employ the same Buffer Strategy for the following Outcome Period.[15]

As such, the Outcome Period applicable to each ETP is particularly important and investors need to have more granular Outcome Periods in order to ensure that they are able to achieve the full Cap Level upside and Buffer Level downside protection. Issuers of Outcome Strategy ETPs generally issue the products in at least quarterly versions of each strategy. In the example above, which referred only to the July 1st to June 30th Outcome Period, an issuer would likely also want to list ETPs employing the Buffer Strategy with at least quarterly Outcome Periods, which would include October 1st through September 30th, January 1st through December 31st, and April 1st through March 31st. The issuer may also elect to list ETPs employing the Buffer Strategy in order to provide monthly Outcome Periods, meaning that there would be twelve separate ETPs listed on the Exchange that each employ the same Buffer Strategy, but have different Outcome Periods. Again, this provide [sic] investors with more precision when deciding which Outcome Strategy ETP to purchase among the Outcome Strategy Series.

With this in mind, the Exchange is proposing to cap the maximum listing fee per year for an Outcome Strategy Series at $16,000. Using the example above, if the issuer listed ETPs employing the Buffer Strategy with quarterly Outcome Periods, the annual fee on a per ETP basis would be $4,000. If the issuer chose to list ETPs with monthly Outcome Periods, the annual fee on a per ETP basis would be $1,333.33. Assuming that each of these ETPs would otherwise be subject to the Exchange's maximum annual listing fee of $7,000, the reduction in annual listing fees on a per ETP basis would be $3,000 and $5,666.67, respectively.

Implementation Date

The Exchange proposes to implement these amendments upon filing.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[16] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[17] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its issuers. The Exchange also notes that its ETP listing business operates in a highly-competitive market in which ETP issuers can readily transfer their listings if they deem fee levels or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors.

The Proposed Fee Cap Is an Equitable Allocation of Fees

The Exchange believes that the proposed cap on fees for Outcome Strategy Series and the associated changes is equitable because it is available to all issuers and applies equally to all Outcome Strategy Series. Outcome Strategy ETPs are unique and are a recent innovation in the ETP space. The Exchange believes that providing a fee cap for such ETPs is a more reasonable and equitable approach than the current fee structure based on the unique features that create the need to offer multiple ETPs based on the same strategy.

The Exchange notes that the proposed fee structure is a cap on fees for Outcome Strategy Series and will only act to leave static or reduce fees for ETPs listed on the Exchange. Further, this proposal will decrease the fees associated with listing ETPs with multiple Outcome Periods on the Exchange, which will reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Outcome Strategy ETPs, to the benefit of investors.

The Proposed Fee Cap Is Not Unfairly Discriminatory

The Exchange also believes that the proposed cap on fees for Outcome Strategy Series and the associated changes is not unfairly discriminatory because, while it only applies to Outcome Strategy ETPs, it represents a significantly improved approach to annual listing fees for ETPs that by their nature require multiple listings. As noted above, Outcome Strategy ETPs are a recent innovation and warrant revisiting the ETP listing pricing model. Listing numerous ETPs with different Outcome Periods allows investors the opportunity to choose the Outcome Strategy ETP with the most appropriate Outcome Period for their investment purposes. Providing a cap on annual listing fees for such ETPs will ensure that listing fees will not be the basis for such additional Outcome Periods not being available to investors. The Exchange also notes that the

[14] The Exchange notes that the Commission has approved the listing and trading of up to 36 Outcome Strategy ETPs on the Exchange. *See* Securities Exchange Act Release No. 83679 (July 26, 2018), 83 FR 35505 (July 26, 2018) (SR–BatsBZX–2017–72).

[15] The Exchange notes that the Cap Levels, Buffer Levels, and the duration of each Outcome Period will vary across Outcome Strategy Series, but that the concepts of providing exposure to a particular reference instrument with an upside cap and limited downside over a particular period of time generally define Outcome Strategy ETPs.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4) and (5).

incremental ongoing regulatory burden associated with listing an additional Outcome Strategy ETP is reduced as compared to the incremental regulatory burden associated with listing additional non-Outcome Strategy ETPs. Specifically, each Outcome Strategy ETP in an Outcome Strategy Series is based on the same reference instrument, utilizes the same investment strategy, has nearly identical holdings to the other Outcome Strategy ETPs in the Outcome Strategy Series, and, to the extent that such Outcome Strategy ETPs are listed pursuant to an exchange rule filing, subject to the same continued listing obligations related to permissible holdings and portfolio limitations. As such, any testing, monitoring, or surveillance for compliance with continued listing standards and obligations applicable to a particular Outcome Strategy ETP will be nearly identical across the entirety of the Outcome Strategy Series, allowing the Exchange's regulatory personnel to leverage the same processes across each Outcome Strategy ETP, which substantially reduces the regulatory burden applicable for each Outcome Strategy ETP. Accordingly, the Exchange believes that the proposed cap on listing fees on Outcome Strategy ETPs is not unfairly discriminatory due to their unique operation.

Further, the Exchange notes that an issuer will only receive the benefit of the annual fee cap if they accrue greater than $16,000 in listing fees for a particular Outcome Strategy Series. The Exchange notes that the proposed fee structure is a cap on fees for Outcome Strategy Series and will only act to leave static or reduce fees for ETPs listed on the Exchange. This proposal will decrease the fees associated with listing ETPs with monthly Outcome Periods on the Exchange, which will reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Outcome Strategy ETPs, also to the benefit of investors.

The Proposed Fee Cap Is Reasonable

The Exchange believes that the proposed cap on fees for Outcome Strategy Series and the associated changes is a reasonable means to incentivize issuers to list (or transfer) Outcome Strategy ETPs on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently [18] for numerous reasons, including listing fees. The proposed rule changes reflect a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors.

The Exchange believes that this proposal represents a significantly improved approach to annual listing fees for ETPs that by their nature require multiple listings. The proposed fee structure is a cap on fees for Outcome Strategy Series and will only act to leave static or reduce fees for ETPs listed on the Exchange. This proposal is intended to help the Exchange compete as an ETP listing venue.

Based on the foregoing, the Exchange believes that the proposed rule changes are consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX as a listing venue by providing better pricing for Outcome Strategy Series. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently [19] for numerous reasons, including listing fees. This proposal is intended to help the Exchange compete as an ETP listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers or competing ETP listing venues to maintain their competitive standing. The Exchange also notes that the proposed change represents a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors. The Exchange believes that such proposed changes will directly enhance competition among ETP listing venues by reducing the costs associated with listing on the Exchange for Outcome Strategy ETPs. Similarly, the Exchange believes that reducing [sic] putting a cap on such ETPs will enhance competition both among listing venues of Outcome Strategy ETPs and among issuers and issuances of Outcome Strategy ETPs through an overall reduction of annual fees for listing such products. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for listings that better reflects the revenue and expenses associated with listing ETPs on the Exchange.

The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all issuers uniformly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[18] For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. *See http://ir.cboe.com/~/media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf.*

[19] For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. *See http://ir.cboe.com/~/media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf.*

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–081 on the subject line.

Paper Comments

• Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–081. 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–CboeBZX–2019–081 and should be submitted on or before October 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20149 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86948; File No. SR–NYSEArca–2019–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the Innovator MSCI EAFE Power Buffer ETFs and Innovator MSCI Emerging Markets Power Buffer ETFs, Series of the Innovator ETFs Trust, Under NYSE Arca Rule 8.600–E

September 12, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 29, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to facilitate the continued listing and trading of shares of the Innovator MSCI EAFE Power Buffer ETF (July Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series), series of the Innovator ETFs Trust (''Trust'') under NYSE Arca Rule 8.600–E (''Managed Fund Shares''); (2) to list and trade shares of up to an additional eleven Innovator MSCI EAFE Power Buffer ETF Series of the Trust; and (3) to list and trade shares of up to an additional eleven Innovator MSCI Emerging Markets Power Buffer ETF Series of the Trust. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes (1) to facilitate the continued listing and trading under NYSE Arca Rule 8.600–E (''Managed Fund Shares'')[4] of shares (''Shares'') of the Innovator MSCI EAFE Power Buffer ETF (July Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series), series of the Innovator ETFs Trust (''Trust'')[5] that do not otherwise meet the standards set forth in Commentary .01(d)(2) to Rule 8.600–E; (2) to list and trade Shares of up to an additional eleven Innovator MSCI EAFE Power Buffer ETF Series of the Trust (collectively, the ''EAFE Power Buffer Funds''); and (3) to list and trade Shares of up to an additional eleven Innovator MSCI Emerging Markets Power Buffer ETF Series of the Trust (collectively, the ''Emerging Markets Power Buffer Funds'') (each a ''Fund'' and, collectively, the ''Funds'').

Shares of the Innovator MSCI EAFE Power Buffer ETF (July Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series) are currently listed and trading on the Exchange. As discussed below, Innovator MSCI EAFE Power Buffer ETF (July Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series) do not currently meet the requirements of Commentary .01(d)(2) to Rule 8.600–E.[6] The Exchange proposes to facilitate the continued listing and trading of each of the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 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.

[5] Shares of the Innovator MSCI EAFE Power Buffer ETF (July Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series) commenced trading on the Exchange on July 1, 2019.

[6] *See* note 11 [sic], *infra.*

Innovator MSCI EAFE Power Buffer ETF (July Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series), notwithstanding the fact that the reference assets underlying the options held by such Funds do not meet the requirements of Commentary .01(d)(2) to Rule 8.600–E. Similarly, the Exchange proposes to list and trade Shares of eleven additional series of the EAFE Power Buffer Funds and eleven additional series of the Emerging Markets Power Buffer Funds notwithstanding the fact that the reference assets underlying the options held by such Funds would not meet the requirements of Commentary .01(d)(2) to Rule 8.600–E.[7]

The Shares are offered by the Trust. The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the 1940 Act for each of the Innovator MSCI EAFE Power Buffer ETF (July Series and October Series) and Innovator MSCI Emerging Markets Power Buffer ETF (July Series and October Series) (each a ''Registration Statement'' and, collectively, the ''Registration Statements'').[8] Innovator Capital Management, LLC (the ''Adviser'') is the investment adviser to the Funds and Milliman Financial Risk Management LLC (the ''Sub-Adviser'') is the sub-adviser.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[9] In addition, Commentary .06 further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Neither the Adviser nor the Sub-Adviser is a registered broker-dealer, and neither the Adviser nor the Sub-Adviser is affiliated with broker-dealers. In addition, Adviser and Sub-Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding a Fund's portfolio. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Registration Statement, the investment objective of the EAFE Power Buffer Funds is to provide investors with returns that match those of the MSCI EAFE Investable Market Index—Price Return (''MSCI EAFE Index'') over a period of approximately one year, while providing a level of protection from MSCI EAFE Index losses. The investment objective of the Emerging Markets Power Buffer Funds is to provide investors with returns that match those of the MSCI Emerging Markets Investable Market Index—Price Return (''MSCI Emerging Markets Index'' and, together with the MSCI EAFE Index, the ''Indexes'') over a period of approximately one year, while providing a level of protection from MSCI Emerging Markets Index losses.

The Funds are each actively managed funds that employ a ''defined outcome strategy'' (the ''Strategies'') that:

- For the EAFE Power Buffer Funds, seeks to provide investment returns that match the gains of the MSCI EAFE Index, up to a maximized annual return (the ''EAFE Cap Level''), while guarding against a decline in the MSCI EAFE Index of the first 15% (the ''EAFE Power Buffer Strategy''); and
- for the Emerging Markets Power Buffer Funds, seeks to provide investment returns that match the gains of the MSCI Emerging Markets Index, up to a maximized annual return (the ''Emerging Markets Cap Level''), while guarding against a decline in the MSCI Emerging Markets Index of the first 15% (the ''Emerging Markets Power Buffer Strategy'').

Pursuant to the Strategies, (i) each EAFE Power Buffer Fund will invest primarily in ''FLEX Options'' (as defined below) or standardized options contracts listed on a U.S. exchange that reference either the MSCI EAFE Index or exchange-traded funds (''ETFs'')[10] that track the MSCI EAFE Index, and (ii) each Emerging Markets Power Buffer Fund will invest primarily in FLEX Options or standardized option contracts listed on a U.S. exchange that reference either the MSCI Emerging Markets Index or ETFs that track the MSCI Emerging Markets Index.[11]

[7] The Trust will issue an additional series of each of the Innovator MSCI EAFE Power Buffer ETF and Innovator MSCI Emerging Markets Power Buffer ETF in October 2019 (''October Series''). Thereafter, the Trust may issue, on a monthly or quarterly basis, up to an additional ten series of each of the Innovator MSCI EAFE Power Buffer ETF and Innovator MSCI Emerging Markets Power Buffer ETF.

[8] *See* Post-Effective Amendment Nos. 229 and 230 to Registration Statement on Form N–1A for the Trust, dated June 28, 2019 (File Nos. 333–146827 and 811–22135) (for the Innovator MSCI EAFE Power Buffer ETF (July Series)); Post-Effective Amendment Nos. 230 and 231 to Registration Statement on Form N–1A for the Trust, dated June 28, 2019 (File Nos. 333–146827 and 811–22135) (for the Innovator MSCI Emerging Markets Power Buffer ETF (July Series)); Post-Effective Amendment Nos. 235 and 236 to Registration Statement on Form N–1A for the Trust, dated July 12, 2019 (File Nos. 333–146827 and 811–22135) (for the Innovator MSCI EAFE Power Buffer ETF (October Series)); and Post-Effective Amendment Nos. 236 and 237 to Registration Statement on Form N–1A for the Trust, dated July 12, 2019 (File Nos. 333–146827 and 811–22135) (for the Innovator MSCI Emerging Markets Power Buffer ETF (October Series)). The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statements. There are no permissible holdings for the Funds that are not described in this proposal. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act (the ''Exemptive Order''). *See* Investment Company Act Release No. 32854 (October 6, 2017) (File No. 812–14781).

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] For purposes of this filing, the term ''ETFs'' means 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 will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[11] Options on the MSCI EAFE Index and the MSCI Emerging Markets Index and FLEX Options on the

Defined outcome strategies are designed to participate in market gains and losses within pre-determined ranges over a specified period (*i.e.,* point to point). These outcomes are predicated on the assumption that an investment vehicle employing the strategy is held for the designated outcome periods. As such, the Exchange is proposing to list up to an additional eleven series (in addition to the two currently trading July Series) for each of the Strategies.

The Exchange submits this proposal in order to allow each Fund to hold listed derivatives, in particular FLexible EXchange Options (''FLEX Options'') on the MSCI EAFE Index or MSCI Emerging Market Index, as applicable, in a manner that does not comply with Commentary .01(d)(2) to Rule 8.600–E.[12] Otherwise, the Funds will comply with all other listing requirements of the Generic Listing Standards [13] for Managed Fund Shares on an initial and continued listing basis under Commentary .01 to Rule 8.600–E.

Innovator MSCI EAFE Power Buffer ETF Series

According to the Registration Statement, under normal market conditions,[14] each EAFE Power Buffer Fund will attempt to achieve its investment objective by employing a ''defined outcome strategy'' that will seek to provide investment returns during the outcome period that match the gains of the MSCI EAFE Index, up to the ''EAFE Cap Level'', while shielding investors from MSCI EAFE Index losses of up to 15%. Pursuant to the EAFE Power Buffer Strategy, each EAFE Power Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the MSCI EAFE Index or ETFs that track the MSCI EAFE Index.

The portfolio managers will invest in a portfolio of FLEX Options linked to an underlying asset, the MSCI EAFE Index, that, when held for the specified period, seeks to produce returns that, over the outcome period, match the returns of the MSCI EAFE Index up to the EAFE Cap Level. Pursuant to the EAFE Power Buffer Strategy, each EAFE Power Buffer Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

- If the MSCI EAFE Index appreciates over the outcome period: The EAFE Power Buffer Fund will seek to provide shareholders with a total return that matches that of the MSCI EAFE Index, up to and including the EAFE Cap Level;
- If the MSCI EAFE Index depreciates over the outcome period by 15% or less: The EAFE Power Buffer Fund will seek to provide a total return of zero;
- If the MSCI EAFE Index decreases over the outcome period by more than 15%: The EAFE Power Buffer Fund will seek to provide a total return loss that is 15% less than the percentage loss on the MSCI EAFE Index with a maximum loss of approximately 85%.

The EAFE Power Buffer Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising a EAFE Power Buffer Fund's portfolio have terms that, when layered upon each other, are designed to buffer against losses or match the gains of the MSCI EAFE Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by an EAFE Power Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the EAFE Power Buffer Fund to create the right to buy or sell the same asset such that the EAFE Power Buffer Fund will always be in a net long position. That is, any obligations of an EAFE Power Buffer Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each EAFE Power Buffer Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of the MSCI EAFE Index up to pre-determined levels in that same month of the following year. The EAFE Power Buffer Funds do not offer any protection against declines in the MSCI EAFE Index exceeding 15% on an annualized basis. Shareholders will bear all MSCI EAFE Index losses exceeding 15% on a one-to-one basis.

The FLEX Options owned by each of the EAFE Power Buffer Funds will have the same terms (*i.e.,* same strike price and expiration) for all investors of an EAFE Power Buffer Fund within an outcome period. The EAFE Cap Level will be determined with respect to each EAFE Power Buffer Fund on the inception date of the EAFE Power Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX Options acquired by the EAFE Power Buffer Fund at that time. The EAFE Cap Level will be determined only once at the beginning of each outcome period and not within an outcome period.

Innovator MSCI Emerging Markets Power Buffer ETF Series

According to the Registration Statement, under normal market conditions, each Emerging Markets Power Buffer Fund will attempt to achieve its investment objective by employing a ''defined outcome strategy'' that will seek to provide investment returns during the outcome period that match the gains of the MSCI Emerging Markets Index, up to the ''Emerging Markets Cap Level'', while shielding investors from MSCI Emerging Markets Index losses of up to 15%. Pursuant to the Emerging Markets Power Buffer Strategy, each Emerging Markets Power Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the MSCI Emerging Markets Index or ETFs that track the MSCI Emerging Markets Index.

The portfolio managers will invest in a portfolio of FLEX Options linked to an underlying asset, the MSCI Emerging Markets Index, that, when held for the specified period, seeks to produce returns that, over the outcome period, match the returns of the MSCI Emerging Markets Index up to the Emerging Markets Cap Level. Pursuant to the Emerging Markets Power Buffer Strategy, each Emerging Markets Power Buffer Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

MSCI EAFE Index and the MSCI Emerging Markets Index are traded on the Cboe Exchange, Inc. (''Cboe Options''). Options on ETFs based on the MSCI EAFE Index and the MSCI Emerging Markets Index are listed and traded in the U.S. on national securities exchanges. The Exchange, Cboe Options and all other national securities exchanges are members of the Intermarket Surveillance Group (''ISG'').

[12] Commentary .01(d)(2) to Rule 8.600–E provides that ''the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).'' The Funds do not meet the generic listing standards because they fail to meet the requirement of Commentary .01(d)(2) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

[13] For purposes of this proposal, the term ''Generic Listing Standards'' shall mean the generic listing rules for Managed Fund Shares under Commentary .01 to Rule 8.600–E.

[14] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

• If the MSCI Emerging Markets Index appreciates over the outcome period: The Emerging Markets Power Buffer Fund will seek to provide shareholders with a total return that matches that of the MSCI Emerging Markets Index, up to and including the Emerging Markets Cap Level;

• If the MSCI Emerging Markets Index depreciates over the outcome period by 15% or less: The Emerging Markets Power Buffer Fund will seek to provide a total return of zero;

• If the MSCI Emerging Markets Index decreases over the outcome period by more than 15%: The Emerging Markets Power Buffer Fund will seek to provide a total return loss that is 15% less than the percentage loss on the MSCI Emerging Markets Index with a maximum loss of approximately 85%.

The Emerging Markets Power Buffer Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising a Emerging Markets Power Buffer Fund's portfolio have terms that, when layered upon each other, are designed to buffer against losses or match the gains of the MSCI Emerging Markets Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by an Emerging Markets Power Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Emerging Markets Power Buffer Fund to create the right to buy or sell the same asset such that the Emerging Markets Power Buffer Fund will always be in a net long position. That is, any obligations of an Emerging Markets Power Buffer Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each Emerging Markets Power Buffer Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of the MSCI Emerging Markets Index up to pre-determined levels in that same month of the following year. The Emerging Markets Power Buffer Funds do not offer any protection against declines in the MSCI Emerging Markets Index exceeding 15% on an annualized basis. Shareholders will bear all MSCI Emerging Markets Index losses exceeding 15% on a one-to-one basis.

The FLEX Options owned by each of the Emerging Markets Power Buffer Funds will have the same terms (*i.e.,* same strike price and expiration) for all investors of an Emerging Markets Power Buffer Fund within an outcome period. The Emerging Markets Cap Level will be determined with respect to each Emerging Markets Power Buffer Fund on the inception date of the Emerging Markets Power Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX Options acquired by the Emerging Markets Power Buffer Fund at that time. The Emerging Markets Cap Level will be determined only once at the beginning of each outcome period and not within an outcome period.

Investment Methodology for the Funds

Under normal market conditions, (i) each EAFE Power Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the MSCI EAFE Index or ETFs that track the MSCI EAFE Index, and (ii) each Emerging Markets Power Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the MSCI Emerging Markets Index or ETFs that track the MSCI Emerging Markets Index. Each of the Funds may invest its net assets (in the aggregate) in other investments which the Adviser or Sub-Adviser believes will help each Fund to meet its investment objective and that will be disclosed at the end of each trading day (''Other Assets''). Other Assets include only the following: Cash or cash equivalents,[15] and standardized options contracts listed on a U.S. securities exchange that reference either the applicable Index or that reference ETFs that track the applicable Index (''Reference ETFs'').[16]

Index Options

The market for options contracts on the Indexes traded on Cboe Options and ETFs on the Indexes is highly liquid. Between August 2018 and August 2019, index and ETF option contracts related to the MSCI EAFE Index traded an average of approximately $1.06 billion notional per day. The average daily notional volume for MSCI EAFE Index options and ETF options during this period was approximately $91.4 million and $970.5 million, respectively; and the average daily MSCI EAFE Index options and ETF options volume was approximately 497 contracts and 154,199 contracts, respectively.[17] Between August 2018 and August 2019, index and ETF option contracts related to the MSCI Emerging Markets Index traded an average of approximately $1.87 billion notional per day. The average daily notional volume for MSCI Emerging Markets Index options and ETF options during this period was approximately $86.94 million and $1.78 billion, respectively; and the average daily MSCI Emerging Markets Index options and ETF options volume was approximately 887 contracts and 447,229 contracts, respectively.[18]

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Funds' Shares and FLEX Options on the Indexes for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying each Index; (ii) the competitive quoting process for FLEX Options; (iii) the significant liquidity in the market for options on the Indexes results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the

[15] For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to Rule 8.600–E.

[16] For purposes of this filing, the term ''ETFs'' includes 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 will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[17] The MSCI EAFE Index is designed to represent the performance of large and mid-cap securities across 21 developed markets, including countries in Europe, Australasia and the Far East, excluding the U.S. and Canada. As of December 2018, the Index constituents covered approximately 85% of the free float-adjusted market capitalization in each of the 21 countries in the Index. As of December 2018, the MSCI Emerging Markets Index constituents included securities in 26 countries across 5 regions, and covered approximately 85% of the free float-adjusted market capitalization in each country. As of July 31, 2019, the MSCI EAFE Index had 923 components with an average market capitalization of approximately $15.0 billion and an average annual trading value of approximately $11.8 billion. As of July 31, 2019, the MSCI Emerging Markets Index had 1,193 components with an average market capitalization of approximately $4.5 billion and an average annual trading value of approximately $8.2 billion. Source: MSCI, Inc.

[18] With respect to FLEX Options, Cboe Options has represented that every FLEX Option order submitted to Cboe Options is exposed to a competitive auction process for price discovery, which process begins with a request for quote (''RFQ'') in which the interested party establishes the terms of the FLEX Options contract. *See* Securities Exchange Act Release No. 83679 (July 20, 2018), 83 FR 35505 (July 26, 2018) (SR–BatsBZX–2017–72) (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, to List and Trade Shares of the Innovator S&P 500 Buffer ETF Series, Innovator S&P 500 Power Buffer ETF Series, and Innovator S&P 500 Ultra Buffer ETF Series Under Rule 14.11(i)) (''BatsBZX Order'').

Exchange, Cboe Options [19] and the Financial Industry Regulatory Authority (''FINRA'') designed to detect violations of the federal securities laws and self-regulatory organization (''SRO'') rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which are comprised primarily of FLEX Options on the Indexes, will be acquired in extremely liquid and highly regulated markets,[20] the Shares are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and Indexes, (b) limitations on portfolio holdings and reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the related Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the related Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 5.5–E(m). FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

As noted above, options on the Indexes are highly liquid. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of each Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the components of each Index, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for securities in the Indexes, options on the Indexes, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Funds' Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Funds' Shares would present manipulation concerns.

All of the options contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Lastly, the issuer represents that it currently provides and maintains for the July Series of the Trust, and will provide and maintain for futures series of the Trust, a publicly available web tool for each of the Funds on its website that provides existing and prospective shareholders with important information to help inform investment decisions. The information provided includes the start and end dates of the current outcome period, the time remaining in the outcome period, the Fund's current net asset value, the Fund's cap for the outcome period and the maximum investment gain available up to the cap for a shareholder purchasing Shares at the current net asset value (''NAV''). For each of the Funds, the web tool also provides information regarding each Fund's buffer. This information includes the remaining buffer available for a shareholder purchasing Shares at the current NAV or the amount of losses that a shareholder purchasing Shares at the current NAV would incur before benefitting from the protection of the buffer. The cover of each Fund's prospectus, as well as the disclosure contained in the Registration Statement, provides the specific web address for each Fund's web tool.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio will meet all such requirements except for those set forth in Commentary .01 (d)(2) (with respect to holdings in listed derivatives), as described below.

The underlying reference asset for the Innovator MSCI EAFE Power Buffer ETF Series of the Trust is FLEX Options on the MSCI EAFE Index and the underlying reference asset for the Innovator MSCI Emerging Markets Power Buffer ETF Series of the Trust is FLEX Options on the MSCI Emerging Markets Index. Each of the Indexes is broad-based and the market for options contracts on the Indexes traded on Cboe Options and ETFs on the Indexes is highly liquid.[21]

The Exchange notes that this proposed rule change is substantively similar to a proposed rule change approved by the Commission for Cboe BZX Exchange, Inc. relating to listing and trading of shares of twelve series of the Innovator S&P 500 Buffer ETF Series, Innovator S&P 500 Power Buffer ETF Series, and Innovator S&P 500 Ultra Buffer ETF Series based on the S&P 500 Index rather than the Indexes.[22]

Availability of Information

The Fund's website (*www.innovatoretfs.com*) will include the prospectus for the Funds that may be downloaded. The Funds' website will include additional quantitative information updated on a daily basis including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[23] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data

[19] Cboe Options and the Exchange are members of the Option Price Regulatory Surveillance Authority, which was established in 2006 to provide efficiencies in looking for insider trading and serves as a central organization to facilitate collaboration in insider trading and investigations for the U.S. options exchanges.

[20] All exchange-listed securities that the Funds may hold will trade on a market that is a member of ISG and the Funds will not hold any non-exchange-listed equities or options; however, not all of the components of the portfolio for the Funds may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. For a list of the current members of ISG, *see www.isgportal.org.*

[21] *See* note 17 and accompanying text, *supra.*

[22] *See* BatsBZX Order, note 18, *supra.*

[23] The Bid/Ask Price of a Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E(c)(2) that forms the basis for each Fund's calculation of NAV at the end of the business day.[24] The website information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Forms N–CSR and its Form N–CEN, filed annually. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Intra-day and closing price information regarding Index options and FLEX Options is available from the Options Price Reporting Authority (''OPRA''), Cboe Options' website and from major market data vendors. Price information regarding ETF options is available from the OPRA, the relevant options exchange and major market data vendors. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for certain fixed income securities to the extent transactions in such securities are reported to TRACE. Price information regarding U.S. government securities and other 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.

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.

Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value (''PIV''), 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.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[25] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Funds' Shares also will be subject to Rule 8.600–E(d)(2)(D) (''Trading Halts'').

Trading Rules

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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With the exception of the requirements of Commentary .01(d)(2) (with respect to listed derivatives) as described above in ''Application of Generic Listing Requirements,'' the Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. Consistent with Commentary .06 to NYSE Arca Rule 8.600–E, the Adviser will 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 each Fund's portfolio. The Exchange represents that, for initial and continued listing, the Funds will be in compliance with Rule 10A–3 [26] under the Act, as provided by NYSE Arca Rule 5.3–E. With respect to each of the proposed additional eleven series of each Fund, a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain 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 will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[27]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

In addition, the Exchange also has a general policy prohibiting the

[24] Under accounting procedures followed by each Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, a Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[25] *See* NYSE Arca Rule 7.12–E.

[26] 17 CFR 240.10A–3.

[27] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Funds on the Exchange.

The issuer must notify the Exchange of any failure by the Funds 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 a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E (m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern time each trading day.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [28] in general and Section 6(b)(5) of the Act [29] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest in that the Shares will meet each of the initial and continued listing criteria in Commentary .01 to NYSE Arca Rule 8.600–E, with the exception of Commentary .01(d)(2) to NYSE Arca Rule 8.600–E, which requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).[30] Commentary .01(d)(2) to NYSE Arca Rule 8.600–E, is intended to ensure that a fund is not subject to manipulation by virtue of significant exposure to a manipulable underlying reference asset by establishing concentration limits among the underlying reference assets for listed derivatives held by a particular fund.

The market for options contracts on the Indexes traded on Cboe Options and ETFs on the Indexes is highly liquid. Between August 2018 and August 2019, index and ETF option contracts related to the MSCI EAFE Index traded an average of approximately $1.06 billion notional per day. The average daily notional volume for MSCI EAFE Index options and ETF options during this period was approximately $91.4 million and $970.5 million, respectively; and the average daily MSCI EAFE Index options and ETF options volume was approximately 497 contracts and 154,199 contracts, respectively. Between August 2018 and August 2019, index and ETF option contracts related to the MSCI Emerging Markets Index traded an average of approximately $1.87 billion notional per day. The average daily notional volume for MSCI Emerging Markets Index options and ETF options during this period was approximately $86.94 million and $1.78 billion, respectively; and the average daily MSCI Emerging Markets Index options and ETF options volume was approximately 887 contracts and 447,229 contracts, respectively. As of July 31, 2019, the MSCI EAFE Index had 923 components with an average market capitalization of approximately $15.0 billion and an average annual trading value of approximately $11.8 billion. As of July 31, 2019, the MSCI Emerging Markets Index had 1,193 components with an average market capitalization of approximately $4.5 billion and an average annual trading value of approximately $8.2 billion.

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Funds' Shares and FLEX Options on the Indexes for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the each Index; (ii) the competitive quoting process for FLEX Options; (iii) the significant liquidity in the market for options on the Indexes results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which are comprised primarily of FLEX Options on the Indexes, will be acquired in extremely liquid and highly regulated markets, the Shares are less readily susceptible to manipulation.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information

[28] 15 U.S.C. 78f.

[29] 15 U.S.C. 78f(b)(5).

[30] As noted above, the Exchange is submitting this proposal because the Funds would not meet the requirements of Commentary .01(d)(2) to Rule 8.600–E. *See* note 12, *supra.*

regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, options on the Indexes are highly liquid and derive their value from the actively traded Index components. The Exchange believes the highly regulated options markets and the broad base and scope of the Indexes make securities that derive their value from the Indexes less susceptible to market manipulation in view of market capitalization and liquidity of the components of the Indexes, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for securities in the Indexes, options on the Indexes, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Funds' Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Funds' Shares would present manipulation concerns.

The Exchange represents that, except as described above, the Funds will meet and be subject to all other requirements of the Generic Listing Standards and other applicable continued listing requirements for Managed Fund Shares under Rule 8.600–E, including those requirements regarding the Disclosed Portfolio, Portfolio Indicative Value, suspension of trading or removal, trading halts, disclosure, and firewalls. The Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares of each Fund. Moreover, all of the options contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will allow the listing and trading of additional types of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–62. 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–NYSEArca–2019–62 and should be submitted on or before October 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20157 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86943; File No. SR–NYSENAT–2019–20]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees

September 12, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 4, 2019, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (''Fee Schedule'') to specify that the Exchange may exclude from its average daily volume and quoting calculations the date of the annual reconstitution of the Russell Investments Indexes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to specify that the Exchange may exclude from its average daily volume and quoting calculations the date of the annual reconstitution of the Russell Investments Indexes (the ''Russell Rebalance'').

Proposed Rule Change

The Exchange's Fee Schedule currently provides that, for purposes of determining transaction fees and credits based on quoting levels, average daily volume (''ADV''), and consolidated ADV (''CADV''), the Exchange may exclude shares traded any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to specify that the Exchange may also exclude from its quoting levels, ADV, and CADV calculations the date of the annual Russell Rebalance.

The Russell Rebalance, which typically occurs in June, is characterized by high trading volumes, much of which derive from market participants who are not generally as active entering the market to rebalance their holdings in-line with the Russell Rebalance.[4] The Exchange believes that the high trading volumes during the Russell Rebalance can significantly impact ADV, CADV and quoting calculations. The Exchange believes that excluding the date of the Russell Rebalance will mitigate the uncertainty faced by ETP Holders as to their quoting, ADV, and CADV levels and the corresponding rebate amounts during the month of the Russell Rebalance, thereby providing ETP Holders with an increased certainty as to that month's cost for trades executed on the Exchange. The Exchange further believes that removing this uncertainty will encourage ETP Holders to participate in trading on the Exchange during the remaining trading days in the month of the Russell Rebalance in a manner intended to be incented by the Exchange's Fee Schedule.

To effectuate this change, the Exchange proposes to add a new subsection (2) to the second bullet under Section I, heading B titled ''General.'' As proposed, the new clause would provide that the Exchange may exclude shares traded any day that ''is the date of the annual reconstitution of the Russell Investments Indexes.'' The proposed change is similar to, and consistent with, the rules of the Exchange's affiliates and other self-regulatory organizations.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange notes that it operates in a highly fragmented and competitive market in which competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Proposed Change Is Reasonable

The Exchange believes that it is reasonable to permit the Exchange to eliminate from the calculation of quoting levels, ADV, and CADV the date of the annual Russell Rebalance because it will provide ETP Holders with a greater level of certainty as to their level of rebates and fees for trading in the month of the Russell Rebalance. By eliminating a trading day that would almost certainly lower an ETP Holder's ADV as a percentage of CADV, the Exchange believes that the proposal will make the majority of ETP Holders more likely to meet the minimum thresholds of higher tiers, which will provide additional incentive for ETP Holders to increase their participation on the Exchange and earn more favorable rates. As noted above, other self-regulatory organizations have adopted rules that are substantially similar to the change being proposed by the Exchange.[8]

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because the exclusion would apply equally to all ETP Holders and market participants and to all volume tiers. Further, the Exchange believes that removing a single known day of atypical trading behavior would allow all ETP Holders to more predictably calculate the costs associated with their trading activity on the Exchange on the Russell Rebalance day, thereby enabling such participants to operate their business without concern of unpredictable and potentially significant changes in revenues and expenses.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the exclusion would apply

[4] *See, e.g.,* Securities Exchange Act Release No. 69793 (July 18, 2013), 78 FR 37865, 37866 (July 24, 2013) (SR–BATS–2013–034) (excluding the Russell Reconstitution Day from the definition of ADV); Securities Exchange Act Release No. 72002 (April 23, 2014), 79 FR 24028, 24029 (April 29, 2014) (SR–EDGX–2014–10) (same).

[5] See, *e.g.,* NYSE Arca Equities Fees and Charges, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (''the date of the annual reconstitution of the Russell Investments Indexes does not count toward volume tiers''); Cboe BZX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/*(''The Exchange excludes from its calculation of ADAV and ADV shares added or removed on . . . the last Friday in June (the 'Russell Reconstitution Day')'').

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) & (5).

[8] *See* notes 4–5, *supra.*

equally to all permit holders, to all market participants and to all volume tiers. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Rather, as discussed above, the Exchange believes that removing a single known day of atypical trading behavior would allow all ETP Holders to more predictably calculate the credits and fees associated with their trading activity on the Russell Rebalance day, thereby enabling such participants to operate their business without concern of unpredictable and potentially significant changes in expenses.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as noted above, by eliminating a trading day that would almost certainly result in lowering an ETP Holder's ADV as a percentage of CADV, the Exchange believes that the proposal will benefit the majority of ETP Holders by making it more likely for them to meet the minimum thresholds of higher tiers, which will provide additional incentive for ETP Holders to increase their participation on the Exchange and earn more favorable rates. The Exchange believes that the proposal thus fosters competition by providing an additional incentive to ETP Holders to submit orders to the Exchange. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intramarket Competition. The proposed change is designed to eliminate a trading day that would almost certainly result in lowering an ETP Holder's ADV as a percentage of CADV. The Exchange believes that the proposal would provide additional incentive for ETP Holders to increase their participation on the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. By providing ETP Holders with a greater level of certainty as to their level of rebates and costs for trading in the month of the Russell Rebalance, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging ETP Holders to their participation on the Exchange in order to earn more favorable rates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2019–20, and should be submitted on or before October 9, 2019.

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20156 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86944; File No. SR–NASDAQ–2019–072]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 4121

September 12, 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 September 5, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 4121.

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

Rule 4121 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker (''MWCB'') mechanism under Rule 4121 was approved by the Commission to operate on a pilot basis,[3] the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[4] including any extensions to the pilot period for the LULD Plan.[5] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 4121 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[7]

The Exchange now proposes to amend Rule 4121 to extend the pilot to the close of business on October 18, 2020. This filing does not propose any substantive or additional changes to Rule 4121. The Exchange will use the extension period to develop with the other SROs rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, with industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The market-wide circuit breaker under Rule 4121 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[8] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 4121, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 4121 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NASDAQ–2011–131).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[5] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NASDAQ–2011–131) (Approval Order); and 68786 (January 31, 2013), 78 FR 8666 (February 6, 2013) (SR–NASDAQ–2013–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of a Rule Change to Nasdaq Rule 4121).

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[7] *See* Securities Exchange Act Release No. 85578 (April 9, 2019), 84 FR 15271 (April 15, 2019) (SR–NASDAQ–2019–027).

[8] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism, which would include industry member participation in such testing. The extension will also permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 4121 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange, in conjunction with the other SROs, consider and develop rules and procedures that would allow for the periodic testing of the performance of the MWCB mechanism. Furthermore, as noted above, the extension will permit the exchanges to consider enhancements to the MWCB processes such as modifications to the Level 3 process.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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 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–2019–072 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–2019–072. 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 public.

All submissions should refer to File Number SR–NASDAQ–2019–072 and should be submitted on or before October 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20150 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33624; 812–15030]

New Mountain Finance Corporation, et al.

September 12, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies and closed-end management investment

companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts. The Order would supersede a prior order.[1]

APPLICANTS: New Mountain Finance Corporation (the ''Company''), NMF Senior Loan Fund I, Inc. (''BDC II''), New Mountain Guardian Partners II, L.P., New Mountain Guardian II Master Fund-A, L.P., New Mountain Guardian II Master Fund-B, L.P., New Mountain Net Lease Partners, L.P. (''Net Lease Partners'') (collectively, the ''Existing Affiliated Funds''), New Mountain Net Lease Corporation, New Mountain Finance Holdings, L.L.C., NMF Ancora Holdings, Inc., NMF QID NGL Holdings, Inc., NMF YP Holdings, Inc., New Mountain Finance DB, L.L.C., New Mountain Finance Servicing, L.L.C., New Mountain Finance SBIC, L.P., New Mountain Finance SBIC II, L.P. (the ''Existing Wholly-Owned Subsidiaries'') and New Mountain Finance Advisers BDC, L.L.C. (''BDC Adviser'').

FILING DATES: The application was filed on May 9, 2019, and amended on August 16, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 7, 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: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: 787 Seventh Avenue, 48th Floor, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at 202–551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) under the Act and rule 17d–1 under the Act to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), one or more Regulated Funds[2] and/or one or more Affiliated Funds[3] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub (defined below) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[4]

Applicants

2. The Company is a Delaware corporation organized as a non-diversified closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[5] The Company is managed by a Board[6] currently comprised of seven persons, four of whom are Independent Directors.[7]

3. BDC II is a Maryland corporation formed for the purpose of operating a registered non-diversified, closed-end management investment company. Prior to relying on the requested Order, BDC II will have filed an election to be regulated as a BDC under the Act. BDC II will be managed by a Board. A majority of BDC II's directors will be Independent Directors.

4. BDC Adviser, a Delaware limited liability company that is registered under the Advisers Act, serves as the investment adviser to the Company pursuant to an investment advisory agreement and will serve as investment adviser to BDC II. BDC Adviser also serves as investment adviser to each Existing Affiliated Fund.

5. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for section 3(c)(7) of the Act.

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary may be

[1] New Mountain Finance Corporation, et al. (File No. 812–14799) Investment Company Act Rel. Nos. 32900 (November 20, 2017) (notice) and 32941 (December 18, 2017) (order).

[2] ''Regulated Funds'' means the Company, BDC II, the Future Regulated Funds and the BDC Downstream Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the proposed co-investment program (the ''Co-Investment Program'').

''Adviser'' means BDC Adviser together with any future investment adviser that (i) controls, is controlled by or is under common control with BDC Adviser, (ii) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[3] ''Affiliated Fund'' means any Existing Affiliated Fund, any Future Affiliated Fund or any New Mountain Proprietary Account. ''Future Affiliated Fund'' means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act, (c) that intends to participate in the Co-Investment Program, and (d) that is not a BDC Downstream Fund. Applicants represent that no Existing Affiliated Fund is a BDC Downstream Fund. ''New Mountain Proprietary Account'' means any direct or indirect, wholly- or majority-owned subsidiary of BDC Adviser that is formed in the future that, from time to time, may hold various financial assets in a principal capacity.

[4] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and Conditions set forth in the application.

[5] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[6] ''Board'' means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund.

''Independent Party'' means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

[7] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[8] ''Wholly-Owned Investment Sub'' means an entity (i) that is a wholly-owned subsidiary of a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 95% or more of the voting and economic interests); (ii) whose sole business purpose is to hold one or more

Continued

prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

7. Applicants represent that BDC Adviser has established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

8. If the requested Order is granted, the Adviser will establish, maintain and implement policies and procedures reasonably designed to ensure that when such opportunities arise, the Adviser to the relevant Regulated Funds is promptly notified and receives the same information about the opportunity as any other Adviser considering the opportunity for its clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [9] and any Board-Established Criteria [10] of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receive sufficient information to allow such Adviser's investment committee to make its independent determination and recommendations under the Conditions.

9. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

10. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, such Adviser's investment committee will approve an investment amount to be allocated to each Regulated Fund and/or Affiliated Fund participating in the Potential Co-Investment Transaction. Applicants state further that, each proposed order amount may be reviewed and adjusted, in accordance with the Adviser's written allocation policies and procedures, by the Adviser's investment committee.[11] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[12]

11. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[13] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal

investments on behalf of such Regulated Fund (and, in the case of an SBIC Subsidiary (defined below), maintains a license under the SBA Act (defined below) and issues debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions to the application; and (iv) (A) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, or (B) that qualifies as a real estate investment trust within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended (''Code'') because substantially all of its assets would consist of real properties. The term ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company. The Existing Wholly-Owned Subsidiaries are Wholly-Owned Investment Subs.

[9] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[10] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to such Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[11] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

[12] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o) and as if the committee members were directors of the fund.

[13] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act.

Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[14]

B. Follow-On Investments

12. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments[15] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

13. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[16] If the Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

14. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[17] or (ii) a Non-Negotiated Follow-On Investment.[18] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

15. Applicants propose that Dispositions[19] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[20]

16. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition[21] or (ii) the securities are Tradable Securities[22] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

17. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten

[14] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[15] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[16] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[17] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[18] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[19] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[20] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review is required because such findings were not required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[21] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[22] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

18. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b–1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) BDC Adviser manages and may be deemed to control each of the Existing Affiliated Funds and an Adviser will manage and may be deemed to control each of the Existing Affiliated Funds, and an Adviser will manage and may be deemed to control any Future Affiliated Fund, (ii) BDC Adviser manages the Company and will manage BDC II pursuant to their respective investment advisory agreements and an Adviser will manage any Future Regulated Fund;(iii) each BDC Downstream Fund[23] will be, deemed to be controlled by its BDC parent and/or its BDC parents's investment adviser; and (iv) the Advisers will control, be controlled by, or under common control with, BDC Adviser. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds, including any BDC Downstream Fund in a manner described by section 57(b) and related to Future Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Each Regulated Fund would also be related to each other Regulated Fund in a manner described by 57(b) or rule 17d–1, as applicable, and thus prohibited from participating in Co-Investment Transactions with each other. In addition, because the New Mountain Proprietary Accounts are controlled by BDC Adviser and, therefore, may be under common control with the Company, BDC II, any future Advisers, and any Future Regulated Funds, the New Mountain Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 57(b) and also prohibited from participating in the Co-Investment Program.

4. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a). The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and

[23] ''BDC Downstream Fund'' means, with respect to any Regulated Fund that is a BDC, an entity (i) that the BDC directly or indirectly controls, (ii) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (iii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iv) whose investment adviser is an Adviser, (v) that is not a Wholly-Owned Investment Sub and (vi) that intends to participate in the Co-Investment Program.

Board-Established Criteria of any Regulated Fund the Adviser manages.

(b). When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a). If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b). If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c). After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i). the terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii). the transaction is consistent with:

(A). The interests of the Regulated Fund's equity holders; and

(B). the Regulated Fund's then-current Objectives and Strategies;

(iii). the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A). The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B). any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv). the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [24] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17 (e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[25] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[26]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days

[24] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[25] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[26] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i). The Adviser to such Regulated Fund or Affiliated Fund [27] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b). *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c). *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i). (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [28] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii). each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i). The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii). the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c). *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i). *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iv). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [29] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-

[27] Any New Mountain Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[28] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

[29] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b). *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i). (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[30] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii). it is a Non-Negotiated Follow-On Investment.

(c). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. Enhanced Review Follow-Ons.

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c). *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iii). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

[30] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a). Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b). All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c). Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d). The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of each Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[31] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by an Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Adviser, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Adviser, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Paterson,

Assistant Secretary.

[FR Doc. 2019–20158 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

[31] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86949; File No. SR–MRX–2019–17]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Priority of Quotes and Orders Rule

September 12, 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 MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MRX Options 2, Section 5 titled ''Market Maker Quotations,'' Options 3, Section 7, titled ''Types of Orders,'' and Options 3, Section 10, titled ''Priority of Quotes and Orders.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.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 amend Options 3, Section 10, titled ''Priority of Quotes and Orders'' to provide additional detail to the rule and make other technical and organizational modifications. The Exchange also proposes to amend cross-references within Options 2, Section 5 titled ''Market Maker Quotations'' and Options 3, Section 7, titled ''Types of Orders.'' Finally, the Exchange proposes to relocate certain rule text as described herein. Each change is described below in detail. This rule change is intended to further clarify the Exchange's current allocation process. This rule change does not amend the current System.

Options 3, Section 10

The Exchange proposes to retitle this rule, ''Allocation and Priority of Quotes and Orders.''

Definitions

The Exchange proposes to capitalize the defined terms ''Market Order'' [3] and ''Limit Order'' [4] within Options 3, Section 10.

The Exchange proposes to amend Options 3, Section 10(a) to re-title this section ''Definitions and Applicability'' instead of simply ''Definitions.'' The Exchange proposes to renumber the current rule text as ''(i)'' and add the following to proposed new ''(ii)'':

> Applicability. This rule does not apply to the Block Order Mechanism described within Options 3, Section 11(a), the Facilitation Mechanism described within Options 3, Section 11(b), the Solicited Order Mechanism described within Options 3, Section 11(d), the Price Improvement Mechanism described within Options 3, Section 13 or an exposure period as provided in Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10 is specifically referenced within MRX Rules applicable to the aforementioned functionality.

The Exchange notes that today, Options 3, Section 10 is applicable to interest on the Order Book. The Exchange has separate and distinct rules for functionality related to the Block Order Mechanism, the Facilitation Mechanism and the Solicited Order Mechanism within Options 3, Section 11, the Price Improvement Mechanism within Options 3, Section 13, and an exposure period as provided in Options 5, Section 2 at Supplementary Material .02. The Exchange proposes to make clear that Options 3, Section 10 shall not apply to the aforementioned functionalities unless Options 3, Section 10 is specifically referred to within MRX Rules applicable to the aforementioned functionality. The Exchange notes that the current Options 3, Section 10 at Commentary .01(c) only makes reference to the Facilitation Mechanism. The Exchange notes that it is amending the rule to reflect all the mechanisms which have their own allocation methodologies. Proposed Options 3, Section 10(a)(ii) reflects the current System. This is not a change to the current System. The Exchange believes that adding the proposed applicability section will better explain the interaction as between Options 3, Section 10 and other trading functionality.

Zero-Bid

The Exchange proposes to create a new proposed Options 3, Section 10(b)(1) and title that rule ''Zero-Bid Option Series.'' The Exchange proposes to capitalize the defined terms ''Market Order'' [5] and ''Limit Order'' within this rule. The Exchange proposes to amend the first sentence to add the phrase ''accepted by the System'' to provide more context to the rule. This rule does not apply to a Market Order that is not accepted because it was rejected upon entry.[6] The Exchange also proposes to add greater detail to the zero bid rule by providing, ''With respect to Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Options 3, Section 3.'' This detail represents the Exchange's current practice. The Exchange believes this rule text will add greater detail to the MRX rule which operates in a similar manner to the Nasdaq Phlx, LLC (''Phlx'').[7]

Priority

The Exchange proposes to amend Options 3, Section 10 because the proposed description of priority adds greater detail to each allocation tier. The general allocation and priority provisions are contained within the Supplementary Material to Options 3, Section 10. The rule therefore needs to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Market Order is defined within Options 3, Section 7(a).

[4] Limit Order is defined within Options 3, Section 7(b).

[5] Market Order is defined within Options 3, Section 7(a).

[6] For example, a Market Order that it rejected due to Limit-Up Limit-Down would not be treated as a Limit Order because it was not accepted by the System.

[7] *See* Phlx 1035, which contains a similar sentence as proposed herein.

be read by referring to the Supplementary Material while reading the main rule. The Exchange proposes to amend the current priority rule within Options 3, Section 10 to explain the allocation of interest and the priority of such allocation in a timeline format to avoid confusion and ease the reading of the rule. Further, the Exchange proposes to add greater detail to the current rule.

The Exchange proposes to rename current Options 3, Section 10(c) titled, ''Priority,'' as ''Execution Priority and Processing in the System.'' The Exchange proposes to provide greater detail to this rule. The Exchange proposes to state that it will apply a Size Pro-Rata execution algorithm to orders, unless otherwise specified. The Exchange proposes to detail the manner in which it applies Size Pro-Rata execution today by stating, ''The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Size Pro-Rata Priority shall mean that if there are two or more resting orders or quotes at the same price, the System allocates contracts from an incoming order or quote to resting orders and quotes beginning with the resting order or quote displaying the largest size proportionally according to displayed size, based on the total number of contracts displayed at that price. If the result is not a whole number, it will be rounded up to the nearest whole number. If there are still contracts to be allocated after the displayed size of all orders at that price has been executed, the remaining size from the incoming order will be allocated proportionally against non-displayed interest according to remaining total size of each resting order at such price, beginning with the order which has the largest total size remaining.'' The Exchange notes that this proposed rule text represents the Exchange's current practice. The Exchange is not amending the manner in which it applies the Size Pro-Rata allocation. This practice is explained in Supplementary Material .01(a) to Options 3, Section 10 wherein it states, ''Professional Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Professional Order or quote.'' The Exchange believes that this rule text will provide Members with transparency as to the allocation methodology applied within the System.

The Exchange proposes to add a new Options 3, Section 10(c)(1) which provides, ''Priority Overlays Applicable to Size Pro-Rata Execution Algorithm: the Exchange will apply the following designated Member priority overlays. No Member shall be entitled to receive a number of contracts that is greater than the size that is associated with their quotation or order.'' This language represents current practice within Supplementary Material .01(c) to Options 3, Section 10. The Exchange is proposing to introduce each priority category in the order that they are allocated, as is currently expressed in the rule today, and note specifically that no Member may receive an allocation greater than their size which is the case today. Current rule text within Supplementary Material .01(c) to Options 3, Section 10 provides, ''No market participant is allocated any portion of an execution unless it has an existing interest at the execution price. Moreover, no market participant can execute a greater number of contracts than is associated with the price of its existing interest.''

The below priority overlays described herein will be applied by the Exchange as explained within the proposed rule for all options series.

Priority Customer

Proposed Options 3, Section 10(c)(1)(A) describes Priority Customer [8] allocation. As is the case today, Priority Customers on the Exchange have priority over other market participants at the same price and in the same option series as specified in current Options 3, Section 10(c). The Exchange proposes to replace Options 3, Section 10(c) and (d) with the following rule text which represents the current System:

> (A) Priority Customer: the highest bid and lowest offer shall have priority except that Priority Customer orders shall have priority over non-Priority Customer interest at the same price in the same options series. If there are two or more Priority Customer orders for the same options series at the same price, priority shall be afforded to such Priority Customer orders in the sequence in which they are received by the System.

The Exchange proposes to initially note the priority that is afforded to Priority Customers and make clear that time priority continues to apply. Specifically, the Exchange proposes to make clear in the introductory paragraph of proposed Options 3, Section 10(c) that non-displayed Priority Customer interest will not trade ahead of other displayed interest at the same price regardless of the displayed interest's capacity, as is the case today within Options 3, Section 10(1)(c) and (d). The Exchange believes that the proposed rule text provides clarity to the current allocation methodology.

Primary Market Maker

The Exchange proposes new rule text at Options 3, Section 10(c)(1)(B) to describe the current manner in which the System handles Enhanced Primary Market Maker [9] Priority:

> Enhanced Primary Market Maker Priority: A Primary Market Maker may be assigned by the Exchange in each option class in accordance with Options 2, Section 3(b). After all Priority Customer orders have been fully executed, provided the Primary Market Maker's quote is at the NBBO, the Primary Market Maker shall be entitled to receive the allocation described in Options 3, Section 10(c)(1)(B)(i), unless the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, in which case allocation would be pursuant to (c)(1)(C). If the order is a Preferenced Order and the Primary Market Maker is also the Preferred Market Maker (''Preferred Market Maker Priority'') then the Preferred Market Maker Participation Entitlement in (c)(1)(C) or (c)(1)(E) applies. The Primary Market Maker shall not be entitled to receive a number of contracts that is greater than the size associated with such Primary Market Maker's quote.

The Exchange proposes to note that a Primary Market Maker may be assigned by the Exchange in each option class in accordance with Options 2, Section 3(b). Reiterating the priority afforded to Priority Customer orders, the Exchange notes that Priority Customers must be first fully executed and then Primary Market Maker allocation would be accounted for in that order.

The Exchange proposes to state that provided the Primary Market Maker's quote is at the NBBO the Primary Market Maker shall be entitled to receive the allocation described in Options 3, Section 10(c)(1)(B)(i), unless the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker.

Current Options 3, Section 10(e) provides,

Precedence of Professional Orders and Market Maker Quotes. Except as provided

[8] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Options 1, Section 1 (a)(35).

[9] The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(34).

under Options 3, Section 10(g), if there are two (2) or more Professional Orders or market maker quotes at the Exchange's best bid or offer, after all Priority Customer Orders (if any) at that price have been filled, executions at that price will be allocated between the Professional Orders and market maker quotes pursuant to an allocation procedure to be determined by the Exchange from time to time; provided, however, that if the Primary Market Maker is quoting at the Exchange's best bid or offer, it shall have precedence over Professional Orders and Competitive Market Maker quotes for execution of orders that are for a specified number of contracts or fewer, which number shall be determined by the Exchange from time to time.

Current Supplementary Material .01 to Options 3, Section 10(a) and (b) provide,

(a) Subject to the two limitations in subparagraphs (b) and (c) below and subject to paragraph .03 (Preferenced Orders), Professional Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Professional Order or quote;

(b) If the Primary Market Maker is quoting at the best price, it has participation rights equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price, forty percent (40%) if there are two (2) other Professional Orders and/or market maker quotes at the best price, and thirty percent (30%) if there are more than two (2) other Professional Orders and/or market maker quotes at the best price . . .

The current rule text describes the precedence of orders for Professional Orders [10] and market maker [11] quotes together. The Exchange notes that Primary Market Makers may receive certain allocations that other market participants do not receive and therefore the Exchange is proposing to provide for Primary Market Maker allocations separately and then account for allocations of all other market participant allocations. As is the case today, after Priority Customers are allocated, Primary Market Makers would be allocated before any other market participant. The Exchange notes that pursuant to the current rule, a Primary Market Maker quoting at the Exchange's best bid or offer shall have precedence over Professional Orders and Competitive Market Maker quotes for execution of orders that are for a specified number of contracts or fewer.

First, the Exchange proposes to replace the term ''best price'' with ''NBBO.'' [12] The best price in this case is the NBBO. The amendment to this term does not reflect a substantive change to the current System. With respect to a Primary Market Maker's quote, the quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. The ''NBBO'' is the best Protected Bid and Protected Offer as defined in the Options Order Protection and Locked/Crossed Markets Plan; Protected Bids and Protected Offers that are displayed at a price but available on the Exchange at a better non-displayed price shall be included in the NBBO at their better non-displayed price for purposes of this rule.[13]

Second, the Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer orders and Market Maker quotes.'' While the term ''Professional Orders'' is defined within Options 1, Section 1(a)(37) to mean an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that simply stating ''non-Priority Customer'' is a less circular manner in which to describe the type of market participant to which the allocation applies. The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for purposes of allocation even if they are from the same market participant.[14] The Exchange notes that if a Competitive Market Maker had both a quote and order at the NBBO, the Competitive Market Maker's quote and order would be considered separately for purposes of allocation pursuant to proposed Options 3, Section 10(c)(1)(E) based on Size Pro-Rata. Whichever quote or order is larger at the best price level will be allocated first based on its individually represented size. This amendment is not a change to current System operations.

Third, the Exchange proposes to reiterate the language in current Supplementary Material .01(b) to Options 3, Section 10 by stating within proposed Options 3, Section 10(c)(1)(B)(i),

(i) When the Primary Market Maker is at the same price as a non-Priority Customer Order or Market Maker quote and the number of contracts is greater than 5, the Primary Market Maker shall receive the greater of:

a. 60% of remaining interest if there is one other non-Priority Customer Order or Market Maker quote at that price; 40% of remaining interest if there are two other non-Priority Customer Orders or Market Maker quotes at that price; or 30% of remaining interest if there are more than two other non-Priority Customer Orders and Market Maker quotes at that price (the ''Primary Market Maker Participation Entitlement''); or

b. the Primary Market Maker's Size Pro-Rata share under subparagraph (a)(1)(E) (''All Other Remaining Interest'').

Fourth, the Exchange proposes to provide within Options 3, Section 10(a)(1)(B) the following new rule text, ''The Primary Market Maker shall not be entitled to receive a number of contracts that is greater than the size associated with such Primary Market Maker's quote.'' This is also the case today.

The Exchange proposes to explain the allocation methodology based on the size of the order within Options 3, Section 10(c)(1)(B)(i). When the number of contracts is greater than 5 allocation would be pursuant to Options 3, Section 10(c)(1)(B) and when the number of contracts is 5 or fewer, allocation would be pursuant to Options 3, Section 10(c)(1)(D). Further, the Exchange proposes within proposed Options 3, Section 10(c)(1)(B) to distinguish when the Primary Market Maker and the Preferred Market Maker Participation Entitlement apply. The Exchange notes if the incoming order to be allocated is

[10] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* Options 1, Section 1(a)(37).

[11] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(20). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(11).

[12] A Primary Market Maker's quote may be executed at the BBO provided the BBO is not inferior to the NBBO. The Primary or Preferenced Market Maker may receive either the Enhanced Primary Market Maker Allocation or the Preferenced Market Maker Allocation if they are quoting at the BBO, which would be equivalent to the NBBO, if an ISO Order is received because the ISO Order would have been routed simultaneously with other orders to any better priced interest at away markets in accordance with MRX Options 5, Section 1(h). Other options markets have a rule equivalent to Options 5, Section 1(h). *See also* Options 3, Section 7(b)(4) which provides, ''An Intermarket Sweep Order (ISO) is a limit order that meets the requirements of Options 5, Section 1(h).''

[13] *See* 17 CFR 242.600(b)(43). National best bid and national best offer means, with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time).

[14] For example, if a Competitive Market Maker submits 2 orders and one quote, this would equate to 3 non-Priority Customer interest (orders and quotes) for purposes of determining the number of market participants for the allocation percentage.

a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, allocation would be pursuant to (c)(1)(C) provided the Preferred Market Maker's quote is at the NBBO. The Preferred Market Maker allocation is provided for within proposed Options 3, Section 10(c)(1)(C). If the order is a Preferenced Order and the Primary Market Maker is also the Preferred Market Maker (''Preferred Market Maker Priority'') then the Preferred Market Maker Participation Entitlement in (c)(1)(C) or (c)(1)(E) applies, depending on whether the Primary Market Maker is quoting at the NBBO.

Preferred Market Maker

The Exchange proposes to provide for the allocation that a Preferred Market Maker is entitled to within proposed Options 3, Section 10(c)(1)(C). The Exchange notes within proposed Options 3, Section 10(c)(1)(B) that if the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, the Enhanced Primary Market Maker Priority shall not apply. The Exchange rules currently provides within Supplementary Material .03 to Options 3, Section 10 the following:

Preferenced Orders. An Electronic Access Member may designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders'').

(a) A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

(b) If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order.

(c) If the Preferred Market Maker is quoting at the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order except that the Primary Market Maker will not receive the participation rights described in paragraphs .01(b) and (c), and instead the Preferred Market Maker shall have participation rights equal to the greater of:

(i) The proportion of the total size at the best price represented by the size of its quote,

(ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price, or

(iii) the full size of a Preferenced Order for five (5) contracts or fewer if the Primary Market Maker appointed to the options class is designated as the Preferred Market Maker.

First, the Exchange proposes to amend cross-references within this current rule text and relocate certain rule text into new proposed Options 3, Section 10(c)(1)(C) which proposes to state,

(C) Preferred Market Maker Priority: After all Priority Customer orders have been fully executed, upon receipt of a Preferenced Order pursuant to Supplementary .01 to Options 3, Section 10, provided the Preferred Market Maker's quote is at the NBBO, the Preferred Market Maker will be afforded a participation entitlement. Preferred Market Maker participation entitlements will apply only after the Opening Process.

(i) When the Preferred Market Maker is at the same price as a non-Priority Customer Order or Market Maker quote, pursuant to the Preferred Market Maker participation entitlement, the Preferred Market Maker shall receive, with respect to a Preferenced Order, the greater of:

a. 60% of remaining interest if there is one other non-Priority Customer Order or Market Maker quote at that price; or 40% of remaining interest if there are two or more other non-Priority Customer Orders or Market Maker quotes at that price; or

b. the Preferred Market Maker's Size Pro-Rata share under subparagraph (c)(1)(E) (''All Other Remaining Interest''); or

c. the entitlement for Orders of 5 Contracts or Fewer under subparagraph (c)(1)(D) if the Preferred Market Maker is also the Primary Market Maker and the incoming Order is for 5 Contracts or Fewer.

Second, the Exchange is proposing to reiterate that a Preferred Market Maker shall be allocated after Priority Customer orders have been fully executed. The Exchange notes that the Preferred Market Maker's bid/offer must be at the NBBO for an entitlement to apply. The Exchange notes that the Preferred Market Maker participation entitlements will apply only after the Opening Process. This is the case today, but is not currently noted within Options 3, Section 10. The Exchange proposes to memorialize this limitation for clarity.

Third, the Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer Orders and Market Maker quotes.'' The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for purposes of allocation even if they are from the same market participant. This amendment is not a change to current System operations.

The new proposed rule text seeks to capture allocation text currently within Supplementary Material .03 to Options 3, Section 10 and add text to demonstrate the interaction between the Entitlement for Orders of 5 Contracts or Fewer and the new proposed bucket of allocation within proposed Options 3, Section 10(c)(1)(E) for all other market participants. The Exchange believes that new rule text makes clear the manner in which the various allocations interact with one another and make clear that the Member is entitled to the greater of all potential allocations.

Orders for 5 Contracts or Fewer

Current Supplementary .01(c) to Options 3, Section 10 provides,

Orders for five (5) contracts or fewer will be executed first by the Primary Market Maker; provided however, that on a quarterly basis the Exchange will evaluate what percentage of the volume executed on the Exchange (excluding volume resulting from the execution of orders in the Facilitation Mechanism (see Options 3, Section 11(d))) is comprised of orders for five (5) contracts or fewer executed by Primary Market Makers, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

The Exchange proposes new rule text within Options 3, Section 10(c)(1)(D) to specifically describe in greater detail the manner in which Orders of 5 Contracts or Fewer are handled. The Exchange notes that the Entitlement for Orders of 5 Contracts or Fewer shall only apply after the Opening Process. The Exchange noted within proposed Options 3, Section 10(a)(ii) that Options 3, Section 10 was not applicable to the Block Order Mechanism, Facilitation Mechanism or the Solicited Order Mechanism within Options 3, Sections 11, the Price Improvement Mechanism within Options 3, Section 13 and an exposure period as provided in Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10 is specifically referenced within MRX Rules applicable to the aforementioned functionality. These limitations apply today and the Exchange proposes to memorialize the limitations within the rule for clarity. The Exchange proposes to amend and relocate the language concerning the quarterly evaluation into this proposed new rule text. Specifically, the Exchange proposes to delete the rule text which excludes volume resulting from the execution of orders in the Facilitation Mechanism as explained herein with the proposed applicability rule text. The Exchange specifically describes allocating orders on the Order Book within Options 3, Section 10. The Exchange describes functionality and allocations for the Block Order Mechanism, the Facilitation Mechanism, the Solicited Order Mechanism, the Price Improvement Mechanism, orders described within Options 3, Section 11

or an exposure period within other MRX Rules.[15] The Entitlement for Orders of 5 Contracts or Fewer is only allocated pursuant to proposed Options 3, Section 10(c)(1)(D) and applies specifically to the Order Book.

The Exchange proposes to make clear the manner in which Orders of 5 Contracts or Fewer may be allocated by providing that a Primary Market Maker is entitled to priority with respect to Orders of 5 Contracts or Fewer if the Primary Market Maker has a quote at the NBBO with no other Priority Customer or Preferenced Market Maker interest present which has a higher priority, including when the Primary Market Maker is also the Preferred Market Maker. Further, the Exchange notes that if the Primary Market Maker is quoting at the NBBO and the Primary Market Maker is also the Preferred Market Maker or there is no Preferred Market Maker quoting at the NBBO, and a Priority Customer has a higher priority at the time of execution, the Priority Customer will be allocated the Orders of 5 Contracts or Fewer up to their displayed size[16] pursuant to Options 3, Section 10(c)(1)(A) and if contracts remain, the Primary Market Maker will be allocated the remainder pursuant to Options 3, Section 10(c)(1)(D).[17] Finally, if the Primary Market Maker is quoting at the NBBO and no Priority Customer has a higher priority at the time of execution and a Preferred Market Maker, who is not the Primary Market Maker, is quoting at the NBBO then allocation shall proceed according to Options 3, Section 10(c)(1)(C). This rule text represents the current practice. The Exchange believes that spelling out the potential scenarios and explaining the resulting allocations will make the allocation of Orders of 5 Contracts or Fewer more transparent.

The Exchange proposes a new category of allocation for all other market participants. The Exchange proposes to note within proposed new Options 3, Section 10(c)(1)(E), ''If there are contracts remaining after all priorities in (A)–(D) have been fully executed, notwithstanding Options 3, Section 7(g)(3)[18] and (k)(2),[19] such contracts shall be executed based on the Size Pro-Rata execution algorithm as described within Options 3, Section 10(c). Legging Orders will be allocated after all other non-displayed interest, pursuant to Options 3, Section 7(k)(2).''[20] The Exchange notes that the priority of allocation for all other market participants' changes with respect to the order in which displayed and non-displayed volume is allocated for non-Priority Customer market participants. Displayed volume will be allocated before non-displayed volume. Further Priority Customer non-displayed Reserve Orders will be allocated before non-Priority Customer non-displayed Reserve Orders. Further Legging Orders are capacity-less and are executed after all non-displayed interest. Proposed Options 3, Section 10(c) describes the manner in which Priority Customers are allocated pursuant to Size Pro-Rata priority. The Exchange believes that separating out all other market participants as a new category as well as referring to the allocation methodology within each bucket of allocation will make clear the manner in which the Exchange allocates. This amendment does not change the operation of the current System.

Finally, the Exchange proposes to state that, ''A Market Maker is entitled only to an Enhanced Primary Market Maker Priority pursuant to Options 3, Section 10(c)(1)(B) or the Entitlement for Orders of 5 Contracts or Fewer pursuant to Options 3, Section 10(c)(1)(D) on a quote, or the Preferred Market Maker Priority pursuant to Options 3, Section 10(c)(1)(C) on a quote.'' The Exchange believes that this text makes clear that only a market maker quote may receive these enhanced allocations. Only a Primary Market Maker quote entitles a Primary Market Maker to the allocations within Options 3, Section 10(c)(1)(B) or (D) while a quote or a Market Maker Order entitles a Preferred Market Maker to the allocation within Options 3, Section 10(c)(1)(C). This amendment does not change the operation of the current System.

Current Rule Text

The Exchange proposes to delete current Options 3, Section 10(c)–(e) as this rule text is being replaced by proposed Options 3, Section 10(c)(1)(A), (B) and (E). The Exchange proposes to delete current Supplementary Material .01 to Options 3, Section 10 which is being replaced by proposed Options 3, Section 10(a)(1)(A), (B), (D) and (E). The Exchange proposes to delete current Supplementary Material .02 to Options 3, Section 10 which is reserved.

The Exchange proposes to relocate current Supplementary Material .03 (a) and (b) and part of (c) to Options 2, Section 10, which is currently reserved, and title that section ''Preferenced Orders''. The Exchange is proposing to delete part of current Supplementary Material .03(c) to Options 3, Section 10 which is being replaced by proposed Options 3, Section 10(c)(1)(C). The Exchange believes that providing a separate rule for Preferenced Orders will make it easier to locate.

MRX Options 3, Section 7(g) and Options 2, Section 4

The Exchange proposes to amend Options 3, Section 7 and Options 2, Section 4 to update cross-references to Options 3, Section 10.

The Exchange also proposes, similar to the changes made within Options 3, Section 10 to remove the term ''Professional'' and substitute that term with a broader term. In this case, the Exchange proposes to utilize the term ''non-Priority Customer'' in place of Professional to indicate market participants who are not Priority Customers.

Examples

1. Size-Pro Rate Description. This provides a description of size pro-rata allocation.

Primary Market Maker quote 10@8.00 × 10@12.00
Order1 Priority Customer Buy 1@8.00
Order2 Priority Customer Reserve Buy 25@8.00 (display qty = 5)
Order3 Firm Reserve Buy 25@8.00 (display qty = 5)
Order4 Firm Buy 25@8.00

[15] *See* Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10.

[16] The Exchange notes that the inverse is also true. If the Primary Market Maker is quoting at the NBBO and the Preferenced Market Maker is not the Primary Market Maker and is quoting at the NBBO then the Priority Customer would receive the allocation.

[17] The Primary Market Maker may receive the remaining contracts (*i.e.* if a Priority Customer has 1 contract order and the Primary Market Maker and a Competitive Market Maker have 5 contracts each, an incoming order of 5 contracts would be allocated such that the Priority Customer receives 1 contract and the remaining 4 contracts would be allocated to the Primary Market Maker).

[18] Options 3, Section 7(g) concerns Reserve Orders. A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. Specifically, Options 3, Section 7(g) provides, ''The displayed portion of a Reserve Order will trade in accordance with Options 3, Section 10(c) and (d) for Priority Customer Orders, and Options 3, Section 10(e) and Supplementary Material .01, for Professional Orders.''

[19] Options 3, Section 7(k) concerns Legging Orders. A legging order is a limit order on the regular limit order book that represents one side of a Complex Options Order that is to buy or sell an equal quantity of two options series resting on the Exchange's Complex Order Book. Specifically, Options 3, Section 7(k)(2) provides, ''(2) A legging order is executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full. When a legging order is executed, the other portion of the Complex Options Order will be automatically executed against the displayed best bid or offer on the Exchange.''

[20] MRX Options 3, Section 7(k)(2) provides, ''A legging order is executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full. When a legging order is executed, the other portion of the Complex Options Order will be automatically executed against the displayed best bid or offer on the Exchange.''

Order5 Firm Reserve Buy 10@8.00 (display qty = 5)
Sell 75 @8.00

First Allocation Tier—Priority Customer, Displayed, Price Time

Sell order trades with:

—Order1 1@8.00
—Order2 5@8.00 (displayed only)

Second Allocation Tier—Non-Priority Customer, Displayed, Pro-rata

Sell Order Trades with:

—Order4 25@8.00
—Order3 5@8.00
—Order5 5@8.00

Order 4 has priority because it is the largest order. The displayed size determines the priority of allocation. If there are two or more resting orders or quotes at the same price, the System allocates contracts beginning with the resting order or quote displaying the largest size proportionally according to displayed size, based on the total number of contracts displayed at that price.

Third Allocation Tier—Priority Customer, Non-Displayed, Price Time

Sell Order Trades with:

—Order2 20@8.00

Fourth Allocation Tier—Non-Priority Customer, Non-Displayed, Pro-Rata

Sell Order trades with:

—Order3 12@8.00
—Order5 2@8.00

The sell order had a size of 75 contracts. In this final allocation, there were still contracts to be allocated after the displayed size of all orders at that price has been executed. The remaining size from the incoming order is allocated proportionally according to remaining total size of each resting order at such price, beginning with the order which has the largest total size remaining.

2. Priority Customer With No Other Interest

Priority Customer Buy 1 @$12.00
Priority Customer Sell 1 @8.00
Sell order trades with resting buy order @8.00 pursuant to Section 10(c)(1)(A)

3. Priority Customer With Other Interest Present and Displayed v. Non-Displayed

Primary Market Maker quote 10@8.00 × 10@12.00
Order1 Priority Customer Buy 1@8.00
Order2 Priority Customer Reserve Buy 25@8.00 (display qty = 5)
Order3 Priority Customer Reserve Buy 25@8.00 (display qty = 5)
Order4 Priority Customer Buy 25@8.00
Order5 Firm Reserve Buy 10 @8.00 (display qty = 5)
Sell 100 @8.00

Sell Order Trades With: Priority Customer Displayed, Price-Time

—Order1 1@8.00
—Order2 5@8.00 (displayed only)
—Order3 5@8.00 (displayed only)
—Order4 25@8.00
Non-Priority Customer displayed, Size Pro-Rata

In this case the Primary Market Maker is allocated the full quantity which is better than entitlement pursuant to Section 10(c)(1)(B)(i). The incoming sell order has only executed 36 of its 100 contracts; 64 remain. There are only 15 displayed contracts remaining (10 PMM and 5 Firm), so each of those displayed quantities are able to be completely filled.

—Primary Market Maker quote 10@8.00
—Order5 5@8.00 (displayed only)

Priority Customer Non-Displayed, Price-Time

—Order2 20@8.00 (non-displayed)
—Order3 20@8.00 (non-displayed)

Non-Priority Customer Non-Displayed, Pro-Rata

—Order5 5@8.00
Remaining Sell 4@8.00 rests on the order book

4. Primary Market Maker Allocation Where It Is 30% and With 5 Lot Include Rounding

30% example below in #4

5 lot:

Primary Market Maker quote 10@8.00 × 10@12.00 (at NBBO)
Order1 Firm Sell 10 @12.00
Order2 Firm Sell 10 @12.00
Buy 5@12.00
Buy order trades with Primary Market Maker *quote 5@12.00 pursuant to Section 10(c)(1)(B)(a)*

5. Primary Market Maker's Size Pro-Rata Share Pursuant Section 10(c)(1)(E) (''All Other Remaining Interest'')

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100 @12.00
Order2 Firm sell 100 @12.00
MM quote 10@8.00 × 10@11.95
Buy 110@12.00

Buy order trades with: best price

—MM quote 10@11.95
Final price, other interest Size Pro-Rata

Primary Market Maker is allocated the Size Pro-Rate quantity pursuant to Section 10(c)(1)(B)(i)(b). This allocation quantity was greater than 30% allocation pursuant to 10(c)(1)(B)(i)(a).

—Primary Market Maker quote 34@12.00
—Order1 33@12.00
—Order2 33@12.00

6. Primary Market Maker Is Preferenced Market Maker and Gets Preferenced Allocation

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100@12.00
MM1 Quote 100@8.00 × 100@12.00
MM2 Quote 100@8.00 × 100@12.00
Buy order 100 @12.00, preferenced to Primary Market Maker

Buy order trades with: Preferenced Market Maker 40% priority share pursuant to Section 10(c)(1)(c)(i)(a).

—Primary Market Maker quote 40@12.00

Pro-rata with other interest:

—Order1 20@12.00
—MM1 Quote 20@12.00
—MM2 Quote 20@12.00

7. Primary Market Maker and Preferenced Market Maker Are Not the Same

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100@12.00
MM1 Quote 100@8.00 × 100@12.00 (at NBBO)
MM2 Quote 100@8.00 × 100@12.00
Buy order 100 @12.00, preferenced to MM1

Buy order trades with: Preferenced Market Maker 40% priority share pursuant to Section 10(c)(1)(c)(i)(a).

—MM1 Quote 40@12.00

Pro-rata with other interest:

Primary Maker Maker quote 20@12.00
Order1 20@12.00
MM2 Quote 20@12.00

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange's proposal to reorganize Options 3, Section 10, add additional context and provide for limitations in the Opening Process and the auctions is consistent with the Act because the additional organization and detail will bring greater transparency to the Exchange's rule. Proposed Options 3, Section 10(a)(ii) reflects the current System. This rule change does not amend the current System.

Specifically, with respect to zero-bid options series, indicating that Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process will be posted at a price equal to the minimum trading increment as defined in Options 3, Section 3 will provide additional information to Members about the Exchange's current practice. The Exchange believes that providing Members with the anticipated outcome of submitting zero-bid Market Orders will remove impediments to and perfect the mechanism of a free and open market.

The Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer orders and Market Maker quotes.'' The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for

[21] 15 U.S.C. 78f(b).
[22] 15 U.S.C. 78f(b)(5).

purposes of allocation even if they are from the same market participant. This amendment is not a change to current System operations.

The Exchange's proposal to replace the term ''best price'' with ''NBBO'' is consistent with the Act because it will provide greater transparency to the allocation process. The best price in this case is the NBBO. The amendment to this term does not reflect a substantive change to the current System. With respect to a Primary Market Maker's quote, the quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. The ''NBBO'' is the best Protected Bid and Protected Offer as defined in the Options Order Protection and Locked/Crossed Markets Plan; Protected Bids and Protected Offers that are displayed at a price but available on the Exchange at a better non-displayed price shall be included in the NBBO at their better non-displayed price for purposes of this rule.[23]

Providing a more detailed description of the manner in which the System applied Size Pro-Rata allocation in the current rule text, which is not currently contained in current Options 3, Section 10, is consistent with the Act because expanding upon the Exchange's current practice will further detail for Members the manner in which allocation occurs in the System. The Exchange's proposal is not intended to change the Exchange's allocation methodology, rather the Exchange is proposing to make clear the manner in which allocation is structured within the System. Further the Exchange's proposal to describe the manner in which orders are allocated to various types of market participants by category of participant and the possible outcomes if multiple allocations apply is consistent with the Act because understanding the potential outcomes protects investors and the public interest by increasing transparency. The Exchange's proposal to relocate current rule text into the current rule and provide additional detail including limitations for Preferred Market Maker participation entitlements during the Opening Process and limitations on allocations of Orders of 5 Contracts or Fewer during the Opening Process and auctions will increase transparency for the protection of investors and the public interest. These limitations exist today. Finally, the Exchange believes that including all potential scenarios for allocation Orders of 5 Contracts or Fewer more clearly explains the Exchange's current allocation process. The Exchange believes that providing more detail benefits investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal does not amend the current manner in which the Exchange allocates interest among market participants. The amendments to the rule reflect the manner in which the current System operates. The Exchange notes that Priority Customers will continue to be afforded certain allocation rights which are not available to other market participants. This is the case today. Primary Market Makers and Preferred Market Makers will continue to be afforded certain entitlements because of the continuing obligations they are bound to with respect to provide liquidity and quoting on the Exchange.[24] The Exchange notes that other market participants will continue to be allocated in the same manner as they are today on a Size Pro-Rata basis after other entitlements have been allocated. The Exchange believes the proposed rule provides more detail and offers more transparency into the allocation process.

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)(iii) of the Act[25] and subparagraph (f)(6) of Rule 19b–4 thereunder.[26]

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–MRX–2019–17 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–MRX–2019–17. 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 that we do not redact or edit personal

[23] *See* 17 CFR 242.600(b)(43).

[24] *See* MRX Rule Options 2, Section 3.

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–MRX–2019–17 and should be submitted on or before October 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20151 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86945; File No. SR–NYSEArca–2019–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the iShares Commodity Curve Carry Strategy ETF Under NYSE Arca Rule 8.600–E

September 12, 2019.

On March 1, 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 change to list and trade shares of the iShares Commodity Curve Carry Strategy ETF, a series of the iShares U.S. ETF Trust. The proposed rule change was published for comment in the **Federal Register** on March 20, 2019.[3] On April 18, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4]

On May 1, 2019, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] On June 18, 2019, the Commission published Amendment No. 1 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on March 20, 2019. September 16, 2019, is 180 days from that date, and November 15, 2019, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, pursuant to Section 19(b)(2) of the Act,[10] the Commission designates November 15, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2019–12), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20153 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85312 (March 14, 2019), 84 FR 10369.

[4] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-12/srnysearca201912-5393880-184151.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 85758, 84 FR 19978 (May 7, 2019).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 86136, 84 FR 29555 (June 24, 2019).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86946; File No. SR–GEMX–2019–10]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Priority of Quotes and Orders Rule

September 12, 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 GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX Options 2, Section 5 titled ''Market Maker Quotations,'' Options 3, Section 7, titled ''Types of Orders,'' and Options 3, Section 10, titled ''Priority of Quotes and Orders.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 amend Options 3, Section 10, titled ''Priority of Quotes and Orders'' to provide additional detail to the rule and make other technical and organizational modifications. The Exchange also proposes to amend cross-references within Options 2, Section 5 titled ''Market Maker Quotations'' and Options 3, Section 7, titled ''Types of Orders.'' Finally, the Exchange proposes to relocate certain rule text as described herein. Each change is described below in detail. This rule change is intended to further clarify the Exchange's current allocation process. This rule change does not amend the current System.

Options 3, Section 10

The Exchange proposes to retitle this rule, ''Allocation and Priority of Quotes and Orders.''

Definitions

The Exchange proposes to capitalize the defined terms ''Market Order'' [3] and ''Limit Order'' [4] within Options 3, Section 10.

The Exchange proposes to amend Options 3, Section 10(a) to re-title this section ''Definitions and Applicability'' instead of simply ''Definitions.'' The Exchange proposes to renumber the current rule text as ''(i)'' and add the following to proposed new ''(ii)'':

Applicability. This rule does not apply to the Block Order Mechanism described within Options 3, Section 11(a), the Facilitation Mechanism described within Options 3, Section 11(b), the Solicited Order Mechanism described within Options 3, Section 11(d), the Price Improvement Mechanism described within Options 3, Section 13, orders described within Options 3, Section 12 or an exposure period as provided in Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10 is specifically referenced within GEMX Rules applicable to the aforementioned functionality.

The Exchange notes that today, Options 3, Section 10 is applicable to interest on the Order Book. The Exchange has separate and distinct rules for functionality related to the Block Order Mechanism, the Facilitation Mechanism and the Solicited Order Mechanism within Options 3, Section 11, the Price Improvement Mechanism within Options 3, Section 13, and an exposure period as provided in Options 5, Section 2 at Supplementary Material .02. The Exchange proposes to make clear that Options 3, Section 10 shall not apply to the aforementioned functionalities unless Options 3, Section 10 is specifically referred to within GEMX Rules applicable to the aforementioned functionality. The Exchange notes that the current Options 3, Section 10 at Commentary .01(c) only makes reference to the Facilitation Mechanism. The Exchange notes that it is amending the rule to reflect all the mechanisms which have their own allocation methodologies. Proposed Options 3, Section 10(a)(ii) reflects the current System. This is not a change to the current System. The Exchange believes that adding the proposed applicability section will better explain the interaction as between Options 3, Section 10 and other trading functionality.

Zero-Bid

The Exchange proposes to create a new proposed Options 3, Section 10(b)(1) and title that rule ''Zero-Bid Option Series.'' The Exchange proposes to capitalize the defined terms ''Market Order'' [5] and ''Limit Order'' within this rule. The Exchange proposes to amend the first sentence to add the phrase ''accepted by the System'' to provide more context to the rule. This rule does not apply to a Market Order that is not accepted because it was rejected upon entry.[6] The Exchange also proposes to add greater detail to the zero bid rule by providing, ''With respect to Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Options 3, Section 3.'' This detail represents the Exchange's current practice. The Exchange believes this rule text will add greater detail to the GEMX rule which operates in a similar manner to the Nasdaq Phlx, LLC (''Phlx'').[7]

Priority

The Exchange proposes to amend Options 3, Section 10 because the proposed description of priority adds greater detail to each allocation tier. The general allocation and priority provisions are contained within the Supplementary Material to Options 3, Section 10. The rule therefore needs to be read by referring to the Supplementary Material while reading the main rule. The Exchange proposes to amend the current priority rule within Options 3, Section 10 to explain the allocation of interest and the priority of such allocation in a timeline format to avoid confusion and ease the reading of the rule. Further, the Exchange proposes to add greater detail to the current rule.

The Exchange proposes to rename current Options 3, Section 10(c) titled, ''Priority,'' as ''Execution Priority and Processing in the System.'' The Exchange proposes to provide greater detail to this rule. The Exchange proposes to state that it will apply a Size Pro-Rata execution algorithm to orders, unless otherwise specified. The Exchange proposes to detail the manner in which it applies Size Pro-Rata execution today by stating, ''The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Size Pro-Rata Priority shall mean that if there are two or more resting orders or quotes at the same price, the System allocates contracts from an incoming order or quote to resting orders and quotes beginning with the resting order or quote displaying the largest size proportionally according to displayed size, based on the total number of contracts displayed at that price. If the result is not a whole number, it will be rounded up to the nearest whole number. If there are still contracts to be allocated after the displayed size of all orders at that price has been executed, the remaining size from the incoming order will be allocated proportionally against non-displayed interest according to remaining total size of each resting order at such price, beginning with the order which has the largest total size remaining.'' The Exchange notes that this proposed rule text represents the Exchange's current practice. The Exchange is not amending the manner in which it applies the Size Pro-Rata allocation. This practice is explained in Supplementary Material .01(a) to Options 3, Section 10 wherein it states, ''Professional Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Professional Order or quote.'' The Exchange believes that this rule text will provide Members with transparency as to the allocation

[3] Market Order is defined within Options 3, Section 7(a).

[4] Limit Order is defined within Options 3, Section 7(b).

[5] Market Order is defined within Options 3, Section 7(a).

[6] For example, a Market Order that it rejected due to Limit-Up Limit-Down would not be treated as a Limit Order because it was not accepted by the System.

[7] *See* Phlx 1035, which contains a similar sentence as proposed herein.

methodology applied within the System.

The Exchange proposes to add a new Options 3, Section 10(c)(1) which provides, ''Priority Overlays Applicable to Size Pro-Rata Execution Algorithm: The Exchange will apply the following designated Member priority overlays. No Member shall be entitled to receive a number of contracts that is greater than the size that is associated with their quotation or order.'' This language represents current practice within Supplementary Material .01(c) to Options 3, Section 10. The Exchange is proposing to introduce each priority category in the order that they are allocated, as is currently expressed in the rule today, and note specifically that no Member may receive an allocation greater than their size which is the case today. Current rule text within Supplementary Material .01(c) to Options 3, Section 10 provides, ''No market participant is allocated any portion of an execution unless it has an existing interest at the execution price. Moreover, no market participant can execute a greater number of contracts than is associated with the price of its existing interest.''

The below priority overlays described herein will be applied by the Exchange as explained within the proposed rule for all options series.

Priority Customer

Proposed Options 3, Section 10(c)(1)(A) describes Priority Customer [8] allocation. As is the case today, Priority Customers on the Exchange have priority over other market participants at the same price and in the same option series as specified in current Options 3, Section 10(c). The Exchange proposes to replace Options 3, Section 10(c) and (d) with the following rule text which represents the current System:

(A) Priority Customer: the highest bid and lowest offer shall have priority except that Priority Customer orders shall have priority over non-Priority Customer interest at the same price in the same options series. If there are two or more Priority Customer orders for the same options series at the same price, priority shall be afforded to such Priority Customer orders in the sequence in which they are received by the System.

The Exchange proposes to initially note the priority that is afforded to Priority Customers and make clear that time priority continues to apply. Specifically, the Exchange proposes to make clear in the introductory paragraph of proposed Options 3, Section 10(c) that non-displayed Priority Customer interest will not trade ahead of other displayed interest at the same price regardless of the displayed interest's capacity, as is the case today within Options 3, Section 10(1)(c) and (d). The Exchange believes that the proposed rule text provides clarity to the current allocation methodology.

Primary Market Maker

The Exchange proposes new rule text at Options 3, Section 10(c)(1)(B) to describe the current manner in which the System handles Enhanced Primary Market Maker [9] Priority:

Enhanced Primary Market Maker Priority: A Primary Market Maker may be assigned by the Exchange in each option class in accordance with Options 2, Section 3(b). After all Priority Customer orders have been fully executed, provided the Primary Market Maker's quote is at the NBBO, the Primary Market Maker shall be entitled to receive the allocation described in Options 3, Section 10(c)(1)(B)(i), unless the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, in which case allocation would be pursuant to (c)(1)(C). If the order is a Preferenced Order and the Primary Market Maker is also the Preferred Market Maker (''Preferred Market Maker Priority'') then the Preferred Market Maker Participation Entitlement in (c)(1)(C) or (c)(1)(E) applies. The Primary Market Maker shall not be entitled to receive a number of contracts that is greater than the size associated with such Primary Market Maker's quote.

The Exchange proposes to note that a Primary Market Maker may be assigned by the Exchange in each option class in accordance with Options 2, Section 3(b). Reiterating the priority afforded to Priority Customer orders, the Exchange notes that Priority Customers must be first fully executed and then Primary Market Maker allocation would be accounted for in that order.

The Exchange proposes to state that provided the Primary Market Maker's quote is at the NBBO the Primary Market Maker shall be entitled to receive the allocation described in Options 3, Section 10(c)(1)(B)(i), unless the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker.

Current Options 3, Section 10(e) provides,

Precedence of Professional Orders and Market Maker Quotes. Except as provided under Options 3, Section 7(g), if there are two (2) or more Professional Orders or Market Maker quotes at the Exchange's best bid or offer, after all Priority Customer Orders (if any) at that price have been filled, executions at that price will be allocated between the Professional Orders and Market Maker quotes pursuant to an allocation procedure to be determined by the Exchange from time to time; provided, however, that if the Primary Market Maker is quoting at the Exchange's best bid or offer, it shall have precedence over Professional Orders and Competitive Market Maker quotes for execution of orders that are for a specified number of contracts or fewer, which number shall be determined by the Exchange from time to time.

Current Supplementary Material .01 to Options 3, Section 10(a) and (b) provide,

(a) Subject to the two limitations in paragraphs (b) and (c) below and subject to paragraph .03 (Preferenced Orders), Professional Orders and Market Maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Professional Order or quote;

(b) If the Primary Market Maker is quoting at the best price, it has participation rights equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or Market Maker quotation at the best price, forty percent (40%) if there are two (2) other Professional Orders and/or Market Maker quotes at the best price, and thirty percent (30%) if there are more than two (2) other Professional Orders and/or Market Maker quotes at the best price . . .

The current rule text describes the precedence of orders for Professional Orders [10] and market maker [11] quotes together. The Exchange notes that Primary Market Makers may receive certain allocations that other market participants do not receive and therefore the Exchange is proposing to provide for Primary Market Maker allocations separately and then account for allocations of all other market participant allocations. As is the case today, after Priority Customers are allocated, Primary Market Makers would be allocated before any other market participant. The Exchange notes that pursuant to the current rule, a Primary Market Maker quoting at the

[8] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Options 1, Section 1 (a)(36).

[9] The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(34).

[10] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* Options 1, Section 1(a)(37).

[11] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(20). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(11).

Exchange's best bid or offer shall have precedence over Professional Orders and Competitive Market Maker quotes for execution of orders that are for a specified number of contracts or fewer.

First, the Exchange proposes to replace the term ''best price'' with ''NBBO.'' [12] The best price in this case is the NBBO. The amendment to this term does not reflect a substantive change to the current System. With respect to a Primary Market Maker's quote, the quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. The ''NBBO'' is the best Protected Bid and Protected Offer as defined in the Options Order Protection and Locked/Crossed Markets Plan; Protected Bids and Protected Offers that are displayed at a price but available on the Exchange at a better non-displayed price shall be included in the NBBO at their better non-displayed price for purposes of this rule.[13]

Second, the Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer orders and Market Maker quotes.'' While the term ''Professional Orders'' is defined within Options 1, Section 1(a)(37) to mean an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that simply stating ''non-Priority Customer'' is a less circular manner in which to describe the type of market participant to which the allocation applies. The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for purposes of allocation even if they are from the same market participant.[14] The Exchange notes that if a Competitive Market Maker had both a quote and order at the NBBO, the Competitive Market Maker's quote and order would be considered separately for purposes of allocation pursuant to proposed Options 3, Section 10(c)(1)(E) based on Size Pro-Rata. Whichever quote or order is larger at the best price level will be allocated first based on its individually represented size. This amendment is not a change to current System operations.

Third, the Exchange proposes to reiterate the language in current Supplementary Material .01(b) to Options 3, Section 10 by stating within proposed Options 3, Section 10(c)(1)(B)(i),

(i) When the Primary Market Maker is at the same price as a non-Priority Customer Order or Market Maker quote and the number of contracts is greater than 5, the Primary Market Maker shall receive the greater of:

a. 60% of remaining interest if there is one other non-Priority Customer Order or Market Maker quote at that price; 40% of remaining interest if there are two other non-Priority Customer Orders or Market Maker quotes at that price; or 30% of remaining interest if there are more than two other non-Priority Customer Orders and Market Maker quotes at that price (the ''Primary Market Maker Participation Entitlement''); or

b. the Primary Market Maker's Size Pro-Rata share under subparagraph (a)(1)(E) (''All Other Remaining Interest'').

Fourth, the Exchange proposes to provide within Options 3, Section 10(a)(1)(B) the following new rule text, ''The Primary Market Maker shall not be entitled to receive a number of contracts that is greater than the size associated with such Primary Market Maker's quote.'' This is also the case today.

The Exchange proposes to explain the allocation methodology based on the size of the order within Options 3, Section 10(c)(1)(B)(i). When the number of contracts is greater than 5 allocation would be pursuant to Options 3, Section 10(c)(1)(B) and when the number of contracts is 5 or fewer, allocation would be pursuant to Options 3, Section 10(c)(1)(D). Further, the Exchange proposes within proposed Options 3, Section 10(c)(1)(B) to distinguish when the Primary Market Maker and the Preferred Market Maker Participation Entitlement apply. The Exchange notes if the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, allocation would be pursuant to (c)(1)(C) provided the Preferred Market Maker's quote is at the NBBO. The Preferred Market Maker allocation is provided for within proposed Options 3, Section 10(c)(1)(C). If the order is a Preferenced Order and the Primary Market Maker is also the Preferred Market Maker (''Preferred Market Maker Priority'') then the Preferred Market Maker Participation Entitlement in (c)(1)(C) or (c)(1)(E) applies, depending on whether the Primary Market Maker is quoting at the NBBO.

Preferred Market Maker

The Exchange proposes to provide for the allocation that a Preferred Market Maker is entitled to within proposed Options 3, Section 10(c)(1)(C). The Exchange notes within proposed Options 3, Section 10(c)(1)(B) that if the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, the Enhanced Primary Market Maker Priority shall not apply. The Exchange rules currently provides within Supplementary Material .03 to Options 3, Section 10 the following:

Preferenced Orders. An Electronic Access Member may designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders'').

(a) A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

(b) If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order.

(c) If the Preferred Market Maker is quoting at the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order except that the Primary Market Maker will not receive the participation rights described in paragraphs .01(b) and (c), and instead the Preferred Market Maker shall have participation rights equal to the greater of:

(i) the proportion of the total size at the best price represented by the size of its quote,

(ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price, or

(iii) the full size of a Preferenced Order for five (5) contracts or fewer if the Primary Market Maker appointed to the options class is designated as the Preferred Market Maker.

First, the Exchange proposes to amend cross-references within this

[12] A Primary Market Maker's quote may be executed at the BBO provided the BBO is not inferior to the NBBO. The Primary or Preferenced Market Maker may receive either the Enhanced Primary Market Maker Allocation or the Preferenced Market Maker Allocation if they are quoting at the BBO, which would be equivalent to the NBBO, if an ISO Order is received because the ISO Order would have been routed simultaneously with other orders to any better priced interest at away markets in accordance with GEMX Options 5, Section 1(h). Other options markets have a rule equivalent to Options 5, Section 1(h). *See also* Options 3, Section 7(b)(4) which provides, ''An Intermarket Sweep Order (ISO) is a limit order that meets the requirements of Options 5, Section 1(h).''

[13] *See* 17 CFR 242.600(a)(43). National best bid and national best offer means, with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time).

[14] For example, if a Competitive Market Maker submits 2 orders and one quote, this would equate to 3 non-Priority Customer interest (orders and quotes) for purposes of determining the number of market participants for the allocation percentage.

current rule text and relocate certain rule text into new proposed Options 3, Section 10(c)(1)(C) which proposes to state,

(C) Preferred Market Maker Priority: After all Priority Customer orders have been fully executed, upon receipt of a Preferenced Order pursuant to Supplementary .01 to Options 3, Section 10, provided the Preferred Market Maker's quote is at the NBBO, the Preferred Market Maker will be afforded a participation entitlement. Preferred Market Maker participation entitlements will apply only after the Opening Process.

(i) When the Preferred Market Maker is at the same price as a non-Priority Customer Order or Market Maker quote, pursuant to the Preferred Market Maker participation entitlement, the Preferred Market Maker shall receive, with respect to a Preferenced Order, the greater of:

a. 60% of remaining interest if there is one other non-Priority Customer Order or Market Maker quote at that price; or 40% of remaining interest if there are two or more other non-Priority Customer Orders or Market Maker quotes at that price; or

b. the Preferred Market Maker's Size Pro-Rata share under subparagraph (c)(1)(E) (''All Other Remaining Interest''); or

c. the entitlement for Orders of 5 Contracts or Fewer under subparagraph (c)(1)(D) if the Preferred Market Maker is also the Primary Market Maker and the incoming Order is for 5 Contracts or Fewer.

Second, the Exchange is proposing to reiterate that a Preferred Market Maker shall be allocated after Priority Customer orders have been fully executed. The Exchange notes that the Preferred Market Maker's bid/offer must be at the NBBO for an entitlement to apply. The Exchange notes that the Preferred Market Maker participation entitlements will apply only after the Opening Process. This is the case today, but is not currently noted within Options 3, Section 10. The Exchange proposes to memorialize this limitation for clarity.

Third, the Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer Orders and Market Maker quotes.'' The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for purposes of allocation even if they are from the same market participant. This amendment is not a change to current System operations.

The new proposed rule text seeks to capture allocation text currently within Supplementary Material .03 to Options 3, Section 10 and add text to demonstrate the interaction between the Entitlement for Orders of 5 Contracts or Fewer and the new proposed bucket of allocation within proposed Options 3, Section 10(c)(1)(E) for all other market participants. The Exchange believes that new rule text makes clear the manner in which the various allocations interact with one another and make clear that the Member is entitled to the greater of all potential allocations.

Orders for 5 Contracts or fewer

Current Supplementary .01(c) to Options 3, Section 10 provides,

Orders for five (5) contracts or fewer will be executed first by the Primary Market Maker; provided however, that on a quarterly basis the Exchange will evaluate what percentage of the volume executed on the Exchange (excluding volume resulting from the execution of orders in the Facilitation Mechanism (see Options 3, Section 11(d))) is comprised of orders for five (5) contracts or fewer executed by Primary Market Makers, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

The Exchange proposes new rule text within Options 3, Section 10(c)(1)(D) to specifically describe in greater detail the manner in which Orders of 5 Contracts or Fewer are handled. The Exchange notes that the Entitlement for Orders of 5 Contracts or Fewer shall only apply after the Opening Process. The Exchange noted within proposed Options 3, Section 10(a)(ii) that Options 3, Section 10 was not applicable to the Block Order Mechanism, Facilitation Mechanism or the Solicited Order Mechanism within Options 3, Sections 11, the Price Improvement Mechanism within Options 3, Section 13 and an exposure period as provided in Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10 is specifically referenced within GEMX Rules applicable to the aforementioned functionality. These limitations apply today and the Exchange proposes to memorialize the limitations within the rule for clarity. The Exchange proposes to amend and relocate the language concerning the quarterly evaluation into this proposed new rule text. Specifically, the Exchange proposes to delete the rule text which excludes volume resulting from the execution of orders in the Facilitation Mechanism as explained herein with the proposed applicability rule text. The Exchange specifically describes allocating orders on the Order Book within Options 3, Section 10. The Exchange describes functionality and allocations for the Block Order Mechanism, the Facilitation Mechanism, the Solicited Order Mechanism, the Price Improvement Mechanism, orders described within Options 3, Section 11 or an exposure period within other GEMX Rules.[15] The Entitlement for Orders of 5 Contracts or Fewer is only allocated pursuant to proposed Options 3, Section 10(c)(1)(D) and applies specifically to the Order Book.

The Exchange proposes to make clear the manner in which Orders of 5 Contracts or Fewer may be allocated by providing that a Primary Market Maker is entitled to priority with respect to Orders of 5 Contracts or Fewer if the Primary Market Maker has a quote at the NBBO with no other Priority Customer or Preferenced Market Maker interest present which has a higher priority, including when the Primary Market Maker is also the Preferred Market Maker. Further, the Exchange notes that if the Primary Market Maker is quoting at the NBBO and the Primary Market Maker is also the Preferred Market Maker or there is no Preferred Market Maker quoting at the NBBO, and a Priority Customer has a higher priority at the time of execution, the Priority Customer will be allocated the Orders of 5 Contracts or Fewer up to their displayed size[16] pursuant to Options 3, Section 10(c)(1)(A) and if contracts remain, the Primary Market Maker will be allocated the remainder pursuant to Options 3, Section 10(c)(1)(D).[17] Finally, if the Primary Market Maker is quoting at the NBBO and no Priority Customer has a higher priority at the time of execution and a Preferred Market Maker, who is not the Primary Market Maker, is quoting at the NBBO then allocation shall proceed according to Options 3, Section 10(c)(1)(C). This rule text represents the current practice. The Exchange believes that spelling out the potential scenarios and explaining the resulting allocations will make the allocation of Orders of 5 Contracts or Fewer more transparent.

The Exchange proposes a new category of allocation for all other market participants. The Exchange proposes to note within proposed new Options 3, Section 10(c)(1)(E), ''If there are contracts remaining after all priorities in (A)–(D) have been fully executed, notwithstanding Options 3,

[15] *See* Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10.

[16] The Exchange notes that the inverse is also true. If the Primary Market Maker is quoting at the NBBO and the Preferenced Market Maker is not the Primary Market Maker and is quoting at the NBBO then the Priority Customer would receive the allocation.

[17] The Primary Market Maker may receive the remaining contracts (*i.e.* if a Priority Customer has 1 contract order and the Primary Market Maker and a Competitive Market Maker have 5 contracts each, an incoming order of 5 contracts would be allocated such that the Priority Customer receives 1 contract and the remaining 4 contracts would be allocated to the Primary Market Maker).

Section 7(g)(3),[18] such contracts shall be executed based on the Size Pro-Rata execution algorithm as described within Options 3, Section 10(c). The Exchange notes that the priority of allocation for all other market participants' changes with respect to the order in which displayed and non-displayed volume is allocated for non-Priority Customer market participants. Displayed volume will be allocated before non-displayed volume. Further Priority Customer non-displayed Reserve Orders will be allocated before non-Priority Customer non-displayed Reserve Orders. Proposed Options 3, Section 10(c) describes the manner in which Priority Customers are allocated pursuant to Size Pro-Rata priority. The Exchange believes that separating out all other market participants as a new category as well as referring to the allocation methodology within each bucket of allocation will make clear the manner in which the Exchange allocates. This amendment does not change the operation of the current System.

Finally, the Exchange proposes to state that, ''A Market Maker is entitled only to an Enhanced Primary Market Maker Priority pursuant to Options 3, Section 10(c)(1)(B) or the Entitlement for Orders of 5 Contracts or Fewer pursuant to Options 3, Section 10(c)(1)(D) on a quote, or the Preferred Market Maker Priority pursuant to Options 3, Section 10(c)(1)(C) on a quote.'' The Exchange believes that this text makes clear that only a market maker quote may receive these enhanced allocations. Only a Primary Market Maker quote entitles a Primary Market Maker to the allocations within Options 3, Section 10(c)(1)(B) or (D) while a quote or a Market Maker Order entitles a Preferred Market Maker to the allocation within Options 3, Section 10(c)(1)(C). This amendment does not change the operation of the current System.

Current Rule Text

The Exchange proposes to delete current Options 3, Section 10(c)–(e) as this rule text is being replaced by proposed Options 3, Section 10(c)(1)(A), (B) and (E). The Exchange proposes to delete current Supplementary Material .01 to Options 3, Section 10 which is being replaced by proposed Options 3, Section 10(a)(1)(A), (B), (D) and (E). The Exchange proposes to delete current Supplementary Material .02 to Options 3, Section 10 which is reserved.

The Exchange proposes to relocate current Supplementary Material .03 (a) and (b) and part of (c) to Options 2, Section 10, which is currently reserved, and title that section ''Preferenced Orders''. The Exchange is proposing to delete part of current Supplementary Material .03(c) to Options 3, Section 10 which is being replaced by proposed Options 3, Section 10(c)(1)(C). The Exchange believes that providing a separate rule for Preferenced Orders will make it easier to locate.

GEMX Options 3, Section 7(g) and Options 2, Section 4

The Exchange proposes to amend Options 3, Section 7 and Options 2, Section 4 to update cross-references to Options 3, Section 10.

The Exchange also proposes, similar to the changes made within Options 3, Section 10 to remove the term ''Professional'' and substitute that term with a broader term. In this case, the Exchange proposes to utilize the term ''non-Priority Customer'' in place of Professional to indicate market participants who are not Priority Customers.

Examples

1. Size-Pro Rate Description. This provides a description of size pro-rata allocation.

Primary Market Maker quote 10@8.00 × 10@ 12.00
Order1 Priority Customer Buy 1@8.00
Order2 Priority Customer Reserve Buy 25@ 8.00 (display qty = 5)
Order3 Firm Reserve Buy 25@8.00 (display qty = 5)
Order4 Firm Buy 25@8.00
Order5 Firm Reserve Buy 10@8.00 (display qty = 5) Sell 75@8.00

First Allocation Tier—Priority Customer, displayed, price time

Sell order trades with:
—Order1 1@8.00
—Order2 5@8.00 (displayed only)

Second Allocation Tier—non- Priority Customer, displayed, pro-rata

Sell Order Trades with:
—Order4 25@8.00
—Order3 5@8.00
—Order5 5@8.00

Order 4 has priority because it is the largest order. The displayed size determines the priority of allocation. If there are two or more resting orders or quotes at the same price, the System allocates contracts beginning with the resting order or quote displaying the largest size proportionally according to displayed size, based on the total number of contracts displayed at that price.

Third Allocation Tier—Priority Customer, non-displayed, price time

Sell Order Trades with:
—Order2 20@8.00

Fourth Allocation Tier—non-Priority Customer, non-displayed, pro-rata

Sell Order trades with:
Order3 12@8.00
Order5 2@8.00

The sell order had a size of 75 contracts. In this final allocation, there were still contracts to be allocated after the displayed size of all orders at that price has been executed. The remaining size from the incoming order is allocated proportionally according to remaining total size of each resting order at such price, beginning with the order which has the largest total size remaining.

2. Priority Customer with no other interest

Priority Customer Buy 1@$12.00
Priority Customer Sell 1@8.00
Sell order trades with resting buy order @8.00 pursuant to Section 10(c)(1)(A)

3. Priority Customer with other interest present and displayed v. non-displayed

Primary Market Maker quote 10@8.00 × 10@ 12.00
Order1 Priority Customer Buy 1@8.00
Order2 Priority Customer Reserve Buy 25@ 8.00 (display qty = 5)
Order3 Priority Customer Reserve Buy 25@ 8.00 (display qty = 5)
Order4 Priority Customer Buy 25@8.00
Order5 Firm Reserve Buy 10@8.00 (display qty = 5)
Sell 100@8.00

Sell order trades with: Priority Customer displayed, price-time

—Order1 1@8.00
—Order2 5@8.00 (displayed only)
—Order3 5@8.00 (displayed only)
—Order4 25@8.00
Non-Priority Customer displayed, Size Pro-Rata

In this case the Primary Market Maker is allocated the full quantity which is better than entitlement pursuant to Section 10(c)(1)(B)(i). The incoming sell order has only executed 36 of its 100 contracts; 64 remain. There are only 15 displayed contracts remaining (10 PMM and 5 Firm), so each of those displayed quantities are able to be completely filled.

—Primary Market Maker quote 10@8.00
—Order5 5@8.00 (displayed only)

Priority Customer non-displayed, price-time

—Order2 20@8.00 (non-displayed)
—Order3 20@8.00 (non-displayed)

Non-Priority Customer non-displayed, pro-rata

Order5 5@8.00
Remaining Sell 4@8.00 rests on the order book

4. Primary Market Maker allocation where it is 30% and with 5 lot include rounding

30% example below in #4
5 lot:

Primary Market Maker quote 10@8.00 × 10@ 12.00 (at NBBO)

[18] Options 3, Section 7(g) concerns Reserve Orders. A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. Specifically, Options 3, Section 7(g) provides, ''The displayed portion of a Reserve Order will trade in accordance with Options 3, Section 10(c) and (d) for Priority Customer Orders, and Options 3, Section 10(e) and Supplementary Material .01, for Professional Orders.''

Order1 Firm Sell 10@12.00
Order2 Firm Sell 10@12.00
Buy 5@12.00
Buy order trades with Primary Market Maker *quote 5@12.00 pursuant to Section 10(c)(1)(B)(a)*

5. Primary Market Maker's Size Pro-Rata share pursuant Section 10(c)(1)(E) (''All Other Remaining Interest'')

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100@12.00
Order2 Firm sell 100@12.00
MM quote 10@8.00 × 10@11.95
Buy 110@12.00

Buy order trades with: Best price

—MM quote 10@11.95
Final price, other interest Size Pro-Rata

Primary Market Maker is allocated the Size Pro-Rate quantity pursuant to Section 10(c)(1)(B)(i)(b). This allocation quantity was greater than 30% allocation pursuant to 10(c)(1)(B)(i)(a).

—Primary Market Maker quote 34@12.00
—Order1 33@12.00
—Order2 33@12.00

6. Primary Market Maker is Preferenced Market Maker and gets Preferenced Allocation

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100@12.00
MM1 Quote 100@8.00 × 100@12.00
MM2 Quote 100@8.00 × 100@12.00
Buy order 100@12.00, preferenced to Primary Market Maker

Buy order trades with: Preferenced Market Maker 40% priority share pursuant to Section 10(c)(1)(c)(i)(a).

—Primary Market Maker quote 40@12.00

Pro-rata with other interest:

—Order1 20@12.00
—MM1 Quote 20@12.00
—MM2 Quote 20@12.00

7. Primary Market Maker and Preferenced Market Maker are not the same

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100@12.00
MM1 Quote 100@8.00 × 100@12.00 (at NBBO)
MM2 Quote 100@8.00 × 100@12.00
Buy order 100@12.00, preferenced to MM1

Buy order trades with: Preferenced Market Maker 40% priority share pursuant to Section 10(c)(1)(c)(i)(a).

—MM1 Quote 40@12.00

Pro-rata with other interest:

—Primary Maker Maker quote 20@12.00
—Order1 20@12.00
—MM2 Quote 20@12.00

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange's proposal to reorganize Options 3, Section 10, add additional context and provide for limitations in the Opening Process and the auctions is consistent with the Act because the additional organization and detail will bring greater transparency to the Exchange's rule. Proposed Options 3, Section 10(a)(ii) reflects the current System. This rule change does not amend the current System.

Specifically, with respect to zero-bid options series, indicating that Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process will be posted at a price equal to the minimum trading increment as defined in Options 3, Section 3 will provide additional information to Members about the Exchange's current practice. The Exchange believes that providing Members with the anticipated outcome of submitting zero-bid Market Orders will remove impediments to and perfect the mechanism of a free and open market.

The Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer orders and Market Maker quotes.'' The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for purposes of allocation even if they are from the same market participant. This amendment is not a change to current System operations.

The Exchange's proposal to replace the term ''best price'' with ''NBBO'' is consistent with the Act because it will provide greater transparency to the allocation process. The best price in this case is the NBBO. The amendment to this term does not reflect a substantive change to the current System. With respect to a Primary Market Maker's quote, the quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. The ''NBBO'' is the best Protected Bid and Protected Offer as defined in the Options Order Protection and Locked/Crossed Markets Plan; Protected Bids and Protected Offers that are displayed at a price but available on the Exchange at a better non-displayed price shall be included in the NBBO at their better non-displayed price for purposes of this rule.[21]

Providing a more detailed description of the manner in which the System applied Size Pro-Rata allocation in the current rule text, which is not currently contained in current Options 3, Section 10, is consistent with the Act because expanding upon the Exchange's current practice will further detail for Members the manner in which allocation occurs in the System. The Exchange's proposal is not intended to change the Exchange's allocation methodology, rather the Exchange is proposing to make clear the manner in which allocation is structured within the System. Further the Exchange's proposal to describe the manner in which orders are allocated to various types of market participants by category of participant and the possible outcomes if multiple allocations apply is consistent with the Act because understanding the potential outcomes protects investors and the public interest by increasing transparency. The Exchange's proposal to relocate current rule text into the current rule and provide additional detail including limitations for Preferred Market Maker participation entitlements during the Opening Process and limitations on allocations of Orders of 5 Contracts or Fewer during the Opening Process and auctions will increase transparency for the protection of investors and the public interest. These limitations exist today. Finally, the Exchange believes that including all potential scenarios for allocation Orders of 5 Contracts or Fewer more clearly explains the Exchange's current allocation process. The Exchange believes that providing more detail benefits investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal does not amend the current manner in which the Exchange allocates interest among market participants. The amendments to the rule reflect the manner in which the current System operates. The Exchange notes that Priority Customers will continue to be afforded certain allocation rights which are not available to other market participants. This is the case today. Primary Market Makers and

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* 17 CFR 242.600(b)(43).

Preferred Market Makers will continue to be afforded certain entitlements because of the continuing obligations they are bound to with respect to provide liquidity and quoting on the Exchange.[22] The Exchange notes that other market participants will continue to be allocated in the same manner as they are today on a Size Pro-Rata basis after other entitlements have been allocated. The Exchange believes the proposed rule provides more detail and offers more transparency into the allocation process.

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)(iii) of the Act[23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

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–GEMX–2019–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2019–10. 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 that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2019–10 and should be submitted on or before October 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20152 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

[22] *See* GEMX Rule Options 2, Section 3.

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86947; File No. SR–ISE–2019–21]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Priority of Quotes and Orders Rule

September 12, 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 ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Options 2, Section 5 titled ''Market Maker Quotations,'' Options 3, Section 7, titled ''Types of Orders,'' and Options 3, Section 10, titled ''Priority of Quotes and Orders.'' The Exchange also proposes a change to Options 3, Section 3, titled ''Minimum Trading Increments'' and to rename a title of Options 6, Section 1, currently titled ''Clearing Member Give Up.''

The text of the proposed rule change is available on the Exchange's website at *http://ise.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 amend Options 3, Section 10, titled ''Priority of Quotes and Orders'' to provide additional detail to the rule and make other technical and organizational modifications. The Exchange also proposes to amend cross-references within Options 2, Section 5 titled ''Market Maker Quotations'' and Options 3, Section 7, titled ''Types of Orders.'' Finally, the Exchange proposes to relocate certain rule text as described herein. Each change is described below in detail. This rule change is intended to further clarify the Exchange's current allocation process. This rule change does not amend the current System.

The Exchange also proposes a change to Options 3, Section 3, titled ''Minimum Trading Increments'' and to rename a title of Options 6, Section 1, titled ''Clearing Member Give Up.''

Options 3, Section 10

The Exchange proposes to retitle this rule, ''Allocation and Priority of Quotes and Orders.''

Definitions

The Exchange proposes to capitalize the defined terms ''Market Order'' [3] and ''Limit Order'' [4] within Options 3, Section 10.

The Exchange proposes to amend Options 3, Section 10(a) to re-title this section ''Definitions and Applicability'' instead of simply ''Definitions.'' The Exchange proposes to renumber the current rule text as ''(i)'' and add the following to proposed new ''(ii)'':

Applicability. This rule does not apply to the Block Order Mechanism described within Options 3, Section 11(a), the Facilitation Mechanism described within Options 3, Section 11(b), the Solicited Order Mechanism described within Options 3, Section 11(d), the Price Improvement Mechanism described within Options 3, Section 13, orders described within Options 3, Section 12 or an exposure period as provided in Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10 is specifically referenced within ISE Rules applicable to the aforementioned functionality.

The Exchange notes that today, Options 3, Section 10 is applicable to interest on the Order Book. The Exchange has separate and distinct rules for functionality related to the Block Order Mechanism, the Facilitation Mechanism and the Solicited Order Mechanism within Options 3, Section 11, the Price Improvement Mechanism within Options 3, Section 13, and an exposure period as provided in Options 5, Section 2 at Supplementary Material .02. The Exchange proposes to make clear that Options 3, Section 10 shall not apply to the aforementioned functionalities unless Options 3, Section 10 is specifically referred to within ISE Rules applicable to the aforementioned functionality. The Exchange notes that the current Options 3, Section 10 at Commentary .01(c) only makes reference to the Facilitation Mechanism. The Exchange notes that it is amending the rule to reflect all the mechanisms which have their own allocation methodologies. Proposed Options 3, Section 10(a)(ii) reflects the current System. This is not a change to the current System. The Exchange believes that adding the proposed applicability section will better explain the interaction as between Options 3, Section 10 and other trading functionality.

Zero-Bid

The Exchange proposes to create a new proposed Options 3, Section 10(b)(1) and title that rule ''Zero-Bid Option Series.'' The Exchange proposes to capitalize the defined terms ''Market Order'' [5] and ''Limit Order'' within this rule. The Exchange proposes to amend the first sentence to add the phrase ''accepted by the System'' to provide more context to the rule. This rule does not apply to a Market Order that is not accepted because it was rejected upon entry.[6] The Exchange also proposes to add greater detail to the zero bid rule by providing, ''With respect to Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Options 3, Section 3.'' This detail represents the Exchange's current practice. The Exchange believes this rule text will add greater detail to the ISE rule which operates in a similar manner to the Nasdaq Phlx, LLC (''Phlx'').[7]

Priority

The Exchange proposes to amend Options 3, Section 10 because the proposed description of priority adds greater detail to each allocation tier. The general allocation and priority provisions are contained within the Supplementary Material to Options 3, Section 10. The rule therefore needs to be read by referring to the Supplementary Material while reading the main rule. The Exchange proposes to amend the current priority rule within Options 3, Section 10 to explain the allocation of interest and the priority of such allocation in a timeline format to avoid confusion and ease the reading of the rule. Further, the Exchange proposes to add greater detail to the current rule.

The Exchange proposes to rename current Options 3, Section 10(c) titled, ''Priority,'' as ''Execution Priority and Processing in the System.'' The Exchange proposes to provide greater detail to this rule. The Exchange proposes to state that it will apply a Size Pro-Rata execution algorithm to orders, unless otherwise specified. The Exchange proposes to detail the manner in which it applies Size Pro-Rata execution today by stating, ''The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Size Pro-Rata Priority shall mean that if there are two or more resting orders or quotes at the same price, the System allocates contracts from an incoming order or quote to resting orders and quotes beginning with the resting order or quote displaying the largest size proportionally according to displayed size, based on the total number of contracts displayed at that price. If the result is not a whole number, it will be rounded up to the nearest whole number. If there are still contracts to be allocated after the displayed size of all orders at that price has been executed, the remaining size from the incoming order will be allocated proportionally against non-displayed interest according to remaining total size of each resting order at such price, beginning with the order which has the largest total size remaining.'' The Exchange notes that this proposed rule text represents the Exchange's current practice. The Exchange is not amending the manner in which it applies the Size Pro-Rata allocation. This practice is explained in Supplementary Material .01(a) to Options 3, Section 10 wherein it states, ''Professional Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available

[3] Market Order is defined within Options 3, Section 7(a).

[4] Limit Order is defined within Options 3, Section 7(b).

[5] Market Order is defined within Options 3, Section 7(a).

[6] For example, a Market Order that it rejected due to Limit-Up Limit-Down would not be treated as a Limit Order because it was not accepted by the System.

[7] *See* Phlx 1035, which contains a similar sentence as proposed herein.

at the best price that is represented by the size of the Professional Order or quote.'' The Exchange believes that this rule text will provide Members with transparency as to the allocation methodology applied within the System.

The Exchange proposes to add a new Options 3, Section 10(c)(1) which provides, ''Priority Overlays Applicable to Size Pro-Rata Execution Algorithm: the Exchange will apply the following designated Member priority overlays. No Member shall be entitled to receive a number of contracts that is greater than the size that is associated with their quotation or order.'' This language represents current practice within Supplementary Material .01(c) to Options 3, Section 10. The Exchange is proposing to introduce each priority category in the order that they are allocated, as is currently expressed in the rule today, and note specifically that no Member may receive an allocation greater than their size which is the case today. Current rule text within Supplementary Material .01(c) to Options 3, Section 10 provides, ''No market participant is allocated any portion of an execution unless it has an existing interest at the execution price. Moreover, no market participant can execute a greater number of contracts than is associated with the price of its existing interest.''

The below priority overlays described herein will be applied by the Exchange as explained within the proposed rule for all options series.

Priority Customer

Proposed Options 3, Section 10(c)(1)(A) describes Priority Customer [8] allocation. As is the case today, Priority Customers on the Exchange have priority over other market participants at the same price and in the same option series as specified in current Options 3, Section 10(c). The Exchange proposes to replace Options 3, Section 10(c) and (d) with the following rule text which represents the current System:

(A) Priority Customer: the highest bid and lowest offer shall have priority except that Priority Customer orders shall have priority over non-Priority Customer interest at the same price in the same options series. If there are two or more Priority Customer orders for the same options series at the same price, priority shall be afforded to such Priority Customer orders in the sequence in which they are received by the System.

The Exchange proposes to initially note the priority that is afforded to Priority Customers and make clear that time priority continues to apply. Specifically, the Exchange proposes to make clear in the introductory paragraph of proposed Options 3, Section 10(c) that non-displayed Priority Customer interest will not trade ahead of other displayed interest at the same price regardless of the displayed interest's capacity, as is the case today within Options 3, Section 10(1)(c) and (d). The Exchange believes that the proposed rule text provides clarity to the current allocation methodology.

Primary Market Maker

The Exchange proposes new rule text at Options 3, Section 10(c)(1)(B) to describe the current manner in which the System handles Enhanced Primary Market Maker [9] Priority:

Enhanced Primary Market Maker Priority: A Primary Market Maker may be assigned by the Exchange in each option class in accordance with Options 2, Section 3(b). After all Priority Customer orders have been fully executed, provided the Primary Market Maker's quote is at the NBBO, the Primary Market Maker shall be entitled to receive the allocation described in Options 3, Section 10(c)(1)(B)(i), unless the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, in which case allocation would be pursuant to (c)(1)(C). If the order is a Preferenced Order and the Primary Market Maker is also the Preferred Market Maker (''Preferred Market Maker Priority'') then the Preferred Market Maker Participation Entitlement in (c)(1)(C) or (c)(1)(E) applies. The Primary Market Maker shall not be entitled to receive a number of contracts that is greater than the size associated with such Primary Market Maker's quote.

The Exchange proposes to note that a Primary Market Maker may be assigned by the Exchange in each option class in accordance with Options 2, Section 3(b). Reiterating the priority afforded to Priority Customer orders, the Exchange notes that Priority Customers must be first fully executed and then Primary Market Maker allocation would be accounted for in that order.

The Exchange proposes to state that provided the Primary Market Maker's quote is at the NBBO the Primary Market Maker shall be entitled to receive the allocation described in Options 3, Section 10(c)(1)(B)(i), unless the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker.

Current Options 3, Section 10(e) provides,

Precedence of Professional Orders and Market Maker Quotes. Except as provided under Options 3, Section 10(g), if there are two (2) or more Professional Orders or market maker quotes at the Exchange's best bid or offer, after all Priority Customer Orders (if any) at that price have been filled, executions at that price will be allocated between the Professional Orders and market maker quotes pursuant to an allocation procedure to be determined by the Exchange from time to time; provided, however, that if the Primary Market Maker is quoting at the Exchange's best bid or offer, it shall have precedence over Professional Orders and Competitive Market Maker quotes for execution of orders that are for a specified number of contracts or fewer, which number shall be determined by the Exchange from time to time.

Current Supplementary Material .01 to Options 3, Section 10(a) and (b) provide,

(a) Subject to the two limitations in subparagraphs (b) and (c) below and subject to paragraph .03 (Preferenced Orders), Professional Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Professional Order or quote;

(b) If the Primary Market Maker is quoting at the best price, it has participation rights equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price, forty percent (40%) if there are two (2) other Professional Orders and/or market maker quotes at the best price, and thirty percent (30%) if there are more than two (2) other Professional Orders and/or market maker quotes at the best price . . .

The current rule text describes the precedence of orders for Professional Orders [10] and market maker [11] quotes together. The Exchange notes that Primary Market Makers may receive certain allocations that other market participants do not receive and therefore the Exchange is proposing to provide for Primary Market Maker allocations separately and then account for allocations of all other market participant allocations. As is the case today, after Priority Customers are allocated, Primary Market Makers

[8] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Options 1, Section 1 (a)(36).

[9] The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[10] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* Options 1, Section 1(a)(39).

[11] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(20). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(11).

would be allocated before any other market participant. The Exchange notes that pursuant to the current rule, a Primary Market Maker quoting at the Exchange's best bid or offer shall have precedence over Professional Orders and Competitive Market Maker quotes for execution of orders that are for a specified number of contracts or fewer.

First, the Exchange proposes to replace the term ''best price'' with ''NBBO.'' [12] The best price in this case is the NBBO. The amendment to this term does not reflect a substantive change to the current System. With respect to a Primary Market Maker's quote, the quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. The ''NBBO'' is the best Protected Bid and Protected Offer as defined in the Options Order Protection and Locked/Crossed Markets Plan; Protected Bids and Protected Offers that are displayed at a price but available on the Exchange at a better non-displayed price shall be included in the NBBO at their better non-displayed price for purposes of this rule.[13]

Second, the Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer orders and Market Maker quotes.'' While the term ''Professional Orders'' is defined within Options 1, Section 1(a)(38) to mean an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that simply stating ''non-Priority Customer'' is a less circular manner in which to describe the type of market participant to which the allocation applies. The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for purposes of allocation even if they are from the same market participant.[14] The Exchange notes that if a Competitive Market Maker had both a quote and order at the NBBO, the Competitive Market Maker's quote and order would be considered separately for purposes of allocation pursuant to proposed Options 3, Section 10(c)(1)(E) based on Size Pro-Rata. Whichever quote or order is larger at the best price level will be allocated first based on its individually represented size. This amendment is not a change to current System operations.

Third, the Exchange proposes to reiterate the language in current Supplementary Material .01(b) to Options 3, Section 10 by stating within proposed Options 3, Section 10(c)(1)(B)(i),

(i) When the Primary Market Maker is at the same price as a non-Priority Customer Order or Market Maker quote and the number of contracts is greater than 5, the Primary Market Maker shall receive the greater of:

a. 60% of remaining interest if there is one other non-Priority Customer Order or Market Maker quote at that price; 40% of remaining interest if there are two other non-Priority Customer Orders or Market Maker quotes at that price; or 30% of remaining interest if there are more than two other non-Priority Customer Orders and Market Maker quotes at that price (the ''Primary Market Maker Participation Entitlement''); or

b. the Primary Market Maker's Size Pro-Rata share under subparagraph (a)(1)(E) (''All Other Remaining Interest'').

Fourth, the Exchange proposes to provide within Options 3, Section 10(a)(1)(B) the following new rule text, ''The Primary Market Maker shall not be entitled to receive a number of contracts that is greater than the size associated with such Primary Market Maker's quote.'' This is also the case today.

The Exchange proposes to explain the allocation methodology based on the size of the order within Options 3, Section 10(c)(1)(B)(i). When the number of contracts is greater than 5, allocation would be pursuant to Options 3, Section 10(c)(1)(B) and when the number of contracts is 5 or fewer, allocation would be pursuant to Options 3, Section 10(c)(1)(D). Further, the Exchange proposes within proposed Options 3, Section 10(c)(1)(B) to distinguish when the Primary Market Maker and the Preferred Market Maker Participation Entitlement apply. The Exchange notes if the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, allocation would be pursuant to (c)(1)(C) provided the Preferred Market Maker's quote is at the NBBO. The Preferred Market Maker allocation is provided for within proposed Options 3, Section 10(c)(1)(C). If the order is a Preferenced Order and the Primary Market Maker is also the Preferred Market Maker (''Preferred Market Maker Priority'') then the Preferred Market Maker Participation Entitlement in (c)(1)(C) or (c)(1)(E) applies, depending on whether the Primary Market Maker is quoting at the NBBO.

Preferred Market Maker

The Exchange proposes to provide for the allocation that a Preferred Market Maker is entitled to within proposed Options 3, Section 10(c)(1)(C). The Exchange notes within proposed Options 3, Section 10(c)(1)(B) that if the incoming order to be allocated is a Preferenced Order and the Primary Market Maker is not the Preferred Market Maker, the Enhanced Primary Market Maker Priority shall not apply. The Exchange rules currently provides within Supplementary Material .03 to Options 3, Section 10 the following:

Preferenced Orders. An Electronic Access Member may designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders'').

(a) A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

(b) If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order.

(c) If the Preferred Market Maker is quoting at the NBBO at the time the Preferenced Order is received, the allocation procedure contained in paragraph .01 shall be applied to the execution of the Preferenced Order except that the Primary Market Maker will not receive the participation rights described in paragraphs .01(b) and (c), and instead the Preferred Market Maker shall have participation rights equal to the greater of:

(i) The proportion of the total size at the best price represented by the size of its quote,

(ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price, or

(iii) the full size of a Preferenced Order for five (5) contracts or fewer if the Primary

[12] A Primary Market Maker's quote may be executed at the BBO provided the BBO is not inferior to the NBBO. The Primary or Preferenced Market Maker may receive either the Enhanced Primary Market Maker Allocation or the Preferenced Market Maker Allocation if they are quoting at the BBO, which would be equivalent to the NBBO, if an ISO Order is received because the ISO Order would have been routed simultaneously with other orders to any better priced interest at away markets in accordance with ISE Options 5, Section 1(h). Other options markets have a rule equivalent to Options 5, Section 1(h). *See also* Options 3, Section 7(b)(4) which provides, ''An Intermarket Sweep Order (ISO) is a limit order that meets the requirements of Options 5, Section 1(h).''

[13] *See* 17 CFR 242.600(b)(43). National best bid and national best offer means, with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time).

[14] For example, if a Competitive Market Maker submits 2 orders and one quote, this would equate to 3 non-Priority Customer interest (orders and quotes) for purposes of determining the number of market participants for the allocation percentage.

Market Maker appointed to the options class is designated as the Preferred Market Maker.

First, the Exchange proposes to amend cross-references within this current rule text and relocate certain rule text into new proposed Options 3, Section 10(c)(1)(C) which proposes to state,

(C) Preferred Market Maker Priority: After all Priority Customer orders have been fully executed, upon receipt of a Preferenced Order pursuant to Supplementary .01 to Options 3, Section 10, provided the Preferred Market Maker's quote is at the NBBO, the Preferred Market Maker will be afforded a participation entitlement. Preferred Market Maker participation entitlements will apply only after the Opening Process.

(i) When the Preferred Market Maker is at the same price as a non-Priority Customer Order or Market Maker quote, pursuant to the Preferred Market Maker participation entitlement, the Preferred Market Maker shall receive, with respect to a Preferenced Order, the greater of:

a. 60% of remaining interest if there is one other non-Priority Customer Order or Market Maker quote at that price; or 40% of remaining interest if there are two or more other non-Priority Customer Orders or Market Maker quotes at that price; or

b. the Preferred Market Maker's Size Pro-Rata share under subparagraph (c)(1)(E) (''All Other Remaining Interest''); or

c. the entitlement for Orders of 5 Contracts or Fewer under subparagraph (c)(1)(D) if the Preferred Market Maker is also the Primary Market Maker and the incoming Order is for 5 Contracts or Fewer.

Second, the Exchange is proposing to reiterate that a Preferred Market Maker shall be allocated after Priority Customer orders have been fully executed. The Exchange notes that the Preferred Market Maker's bid/offer must be at the NBBO for an entitlement to apply. The Exchange notes that the Preferred Market Maker participation entitlements will apply only after the Opening Process. This is the case today, but is not currently noted within Options 3, Section 10. The Exchange proposes to memorialize this limitation for clarity.

Third, the Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer Orders and Market Maker quotes.'' The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for purposes of allocation even if they are from the same market participant. This amendment is not a change to current System operations.

The new proposed rule text seeks to capture allocation text currently within Supplementary Material .03 to Options 3, Section 10 and add text to demonstrate the interaction between the Entitlement for Orders of 5 Contracts or Fewer and the new proposed bucket of allocation within proposed Options 3, Section 10(c)(1)(E) for all other market participants. The Exchange believes that new rule text makes clear the manner in which the various allocations interact with one another and make clear that the Member is entitled to the greater of all potential allocations.

Orders for 5 Contracts or Fewer

Current Supplementary .01(c) to Options 3, Section 10 provides,

Orders for five (5) contracts or fewer will be executed first by the Primary Market Maker; provided however, that on a quarterly basis the Exchange will evaluate what percentage of the volume executed on the Exchange (excluding volume resulting from the execution of orders in the Facilitation Mechanism (see Options 3, Section 11(d))) is comprised of orders for five (5) contracts or fewer executed by Primary Market Makers, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

The Exchange proposes new rule text within Options 3, Section 10(c)(1)(D) to specifically describe in greater detail the manner in which Orders of 5 Contracts or Fewer are handled. The Exchange notes that the Entitlement for Orders of 5 Contracts or Fewer shall only apply after the Opening Process. The Exchange noted within proposed Options 3, Section 10(a)(ii) that Options 3, Section 10 was not applicable to the Block Order Mechanism, Facilitation Mechanism or the Solicited Order Mechanism within Options 3, Sections 11, the Price Improvement Mechanism within Options 3, Section 13 and an exposure period as provided in Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10 is specifically referenced within ISE Rules applicable to the aforementioned functionality. These limitations apply today and the Exchange proposes to memorialize the limitations within the rule for clarity. The Exchange proposes to amend and relocate the language concerning the quarterly evaluation into this proposed new rule text. Specifically, the Exchange proposes to delete the rule text which excludes volume resulting from the execution of orders in the Facilitation Mechanism as explained herein with the proposed applicability rule text. The Exchange specifically describes allocating orders on the Order Book within Options 3, Section 10. The Exchange describes functionality and allocations for the Block Order Mechanism, the Facilitation Mechanism, the Solicited Order Mechanism, the Price Improvement Mechanism, orders described within Options 3, Section 11 or an exposure period within other ISE Rules.[15] The Entitlement for Orders of 5 Contracts or Fewer is only allocated pursuant to proposed Options 3, Section 10(c)(1)(D) and applies specifically to the Order Book.

The Exchange proposes to make clear the manner in which Orders of 5 Contracts or Fewer may be allocated by providing that a Primary Market Maker is entitled to priority with respect to Orders of 5 Contracts or Fewer if the Primary Market Maker has a quote at the NBBO with no other Priority Customer or Preferenced Market Maker interest present which has a higher priority, including when the Primary Market Maker is also the Preferred Market Maker. Further, the Exchange notes that if the Primary Market Maker is quoting at the NBBO and the Primary Market Maker is also the Preferred Market Maker or there is no Preferred Market Maker quoting at the NBBO, and a Priority Customer has a higher priority at the time of execution, the Priority Customer will be allocated the Orders of 5 Contracts or Fewer up to their displayed size[16] pursuant to Options 3, Section 10(c)(1)(A) and if contracts remain, the Primary Market Maker will be allocated the remainder pursuant to Options 3, Section 10(c)(1)(D).[17] Finally, if the Primary Market Maker is quoting at the NBBO and no Priority Customer has a higher priority at the time of execution and a Preferred Market Maker, who is not the Primary Market Maker, is quoting at the NBBO then allocation shall proceed according to Options 3, Section 10(c)(1)(C). This rule text represents the current practice. The Exchange believes that spelling out the potential scenarios and explaining the resulting allocations will make the allocation of Orders of 5 Contracts or Fewer more transparent.

The Exchange proposes a new category of allocation for all other market participants. The Exchange proposes to note within proposed new

[15] *See* Options 5, Section 2 at Supplementary Material .02, unless Options 3, Section 10.

[16] The Exchange notes that the inverse is also true. If the Primary Market Maker is quoting at the NBBO and the Preferenced Market Maker is not the Primary Market Maker and is quoting at the NBBO then the Priority Customer would receive the allocation.

[17] The Primary Market Maker may receive the remaining contracts (*i.e.* if a Priority Customer has 1 contract order and the Primary Market Maker and a Competitive Market Maker have 5 contracts each, an incoming order of 5 contracts would be allocated such that the Priority Customer receives 1 contract and the remaining 4 contracts would be allocated to the Primary Market Maker).

Options 3, Section 10(c)(1)(E), ''If there are contracts remaining after all priorities in (A)–(D) have been fully executed, notwithstanding Options 3, Section 7(g)(3) [18] and (k)(2) [19], such contracts shall be executed based on the Size Pro-Rata execution algorithm as described within Options 3, Section 10(c). Legging Orders will be allocated after all other non-displayed interest, pursuant to Options 3, Section 7(k)(2).'' [20] The Exchange notes that the priority of allocation for all other market participants' changes with respect to the order in which displayed and non-displayed volume is allocated for non-Priority Customer market participants. Displayed volume will be allocated before non-displayed volume. Further Priority Customer non-displayed Reserve Orders will be allocated before non-Priority Customer non-displayed Reserve Orders. Further Legging Orders are capacity-less and are executed after all non-displayed interest. Proposed Options 3, Section 10(c) describes the manner in which Priority Customers are allocated pursuant to Size Pro-Rata priority. The Exchange believes that separating out all other market participants as a new category as well as referring to the allocation methodology within each bucket of allocation will make clear the manner in which the Exchange allocates. This amendment does not change the operation of the current System.

Finally, the Exchange proposes to state that, ''A Market Maker is entitled only to an Enhanced Primary Market Maker Priority pursuant to Options 3, Section 10(c)(1)(B) or the Entitlement for Orders of 5 Contracts or Fewer pursuant to Options 3, Section 10(c)(1)(D) on a quote, or the Preferred Market Maker Priority pursuant to Options 3, Section 10(c)(1)(C) on a quote.'' The Exchange believes that this text makes clear that only a market maker quote may receive these enhanced allocations. Only a Primary Market Maker quote entitles a Primary Market Maker to the allocations within Options 3, Section 10(c)(1)(B) or (D) while a quote or a Market Maker Order entitles a Preferred Market Maker to the allocation within Options 3, Section 10(c)(1)(C). This amendment does not change the operation of the current System.

Current Rule Text

The Exchange proposes to delete current Options 3, Section 10(c)–(e) as this rule text is being replaced by proposed Options 3, Section 10(c)(1)(A), (B) and (E). The Exchange proposes to delete current Supplementary Material .01 to Options 3, Section 10 which is being replaced by proposed Options 3, Section 10(a)(1)(A), (B), (D) and (E). The Exchange proposes to delete current Supplementary Material .02 to Options 3, Section 10 which is reserved.

The Exchange proposes to relocate current Supplementary Material .03 (a) and (b) and part of (c) to Options 2, Section 10, which is currently reserved, and title that section ''Preferenced Orders''. The Exchange is proposing to delete part of current Supplementary Material .03(c) to Options 3, Section 10 which is being replaced by proposed Options 3, Section 10(c)(1)(C). The Exchange believes that providing a separate rule for Preferenced Orders will make it easier to locate.

ISE Options 3, Section 7(g) and Options 2, Section 4

The Exchange proposes to amend Options 3, Section 7 and Options 2, Section 4 to update cross-references to Options 3, Section 10.

The Exchange also proposes, similar to the changes made within Options 3, Section 10 to remove the term ''Professional'' and substitute that term with a broader term. In this case, the Exchange proposes to utilize the term ''non-Priority Customer'' in place of Professional to indicate market participants who are not Priority Customers.

Examples

1. Size-Pro Rate Description. This provides a description of size pro-rata allocation

Primary Market Maker quote 10@8.00 × 10@ 12.00
Order1 Priority Customer Buy 1@8.00
Order2 Priority Customer Reserve Buy 25@ 8.00 (display qty = 5)
Order3 Firm Reserve Buy 25@8.00 (display qty = 5)
Order4 Firm Buy 25@8.00
Order5 Firm Reserve Buy 10@8.00 (display qty = 5)
Sell 75 @8.00

First Allocation Tier—Priority Customer, Displayed, Price Time

Sell order trades with:

—Order1 1@8.00
—Order2 5@8.00 (displayed only)

Second Allocation Tier—Non-Priority Customer, Displayed, Pro-Rata

Sell Order Trades with:

—Order4 25@8.00
—Order3 5@8.00
—Order5 5@8.00

Order 4 has priority because it is the largest order. The displayed size determines the priority of allocation. If there are two or more resting orders or quotes at the same price, the System allocates contracts beginning with the resting order or quote displaying the largest size proportionally according to displayed size, based on the total number of contracts displayed at that price.

Third Allocation Tier—Priority Customer, Non-Displayed, Price Time

Sell Order Trades with:

—Order2 20@8.00

Fourth Allocation Tier—Non-Priority Customer, Non-Displayed, Pro-Rata

Sell Order trades with:

Order3 12@8.00
Order5 2@8.00

The sell order had a size of 75 contracts. In this final allocation, there were still contracts to be allocated after the displayed size of all orders at that price has been executed. The remaining size from the incoming order is allocated proportionally according to remaining total size of each resting order at such price, beginning with the order which has the largest total size remaining.

2. Priority Customer With No Other Interest

Priority Customer Buy 1 @$12.00
Priority Customer Sell 1 @8.00
Sell Order Trades With resting buy order @ 8.00 pursuant to Section 10(c)(1)(A)

3. Priority Customer With Other Interest Present and Displayed v. Non-Displayed

Primary Market Maker quote 10@8.00 × 10@ 12.00
Order1 Priority Customer Buy 1@8.00
Order2 Priority Customer Reserve Buy 25@ 8.00 (display qty = 5)
Order3 Priority Customer Reserve Buy 25@ 8.00 (display qty = 5)
Order4 Priority Customer Buy 25@8.00
Order5 Firm Reserve Buy 10 @8.00 (display qty = 5)
Sell 100 @8.00

Sell Order Trades With: Priority Customer Displayed, Price-Time

—Order1 1@8.00
—Order2 5@8.00 (displayed only)
—Order3 5@8.00 (displayed only)

[18] Options 3, Section 7(g) concerns Reserve Orders. A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. Specifically, Options 3, Section 7(g) provides, ''The displayed portion of a Reserve Order will trade in accordance with Options 3, Section 10(c) and (d) for Priority Customer Orders, and Options 3, Section 10(e) and Supplementary Material .01, for Professional Orders.''

[19] Options 3, Section 7(k) concerns Legging Orders. A legging order is a limit order on the regular limit order book that represents one side of a Complex Options Order that is to buy or sell an equal quantity of two options series resting on the Exchange's Complex Order Book. Specifically, Options 3, Section 7(k)(2) provides, ''(2) A legging order is executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full. When a legging order is executed, the other portion of the Complex Options Order will be automatically executed against the displayed best bid or offer on the Exchange.''

[20] ISE Options 3, Section 7(k)(2) provides, ''A legging order is executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full. When a legging order is executed, the other portion of the Complex Options Order will be automatically executed against the displayed best bid or offer on the Exchange.''

—Order4 25@8.00

Non-Priority Customer Displayed, Size Pro-Rata

In this case the Primary Market Maker is allocated the full quantity which is better than entitlement pursuant to Section 10(c)(1)(B)(i). The incoming sell order has only executed 36 of its 100 contracts; 64 remain. There are only 15 displayed contracts remaining (10 PMM and 5 Firm), so each of those displayed quantities are able to be completely filled.

—Primary Market Maker quote 10@8.00
—Order5 5@8.00 (displayed only)

Priority Customer Non-Displayed, Price-Time

—Order2 20@8.00 (non-displayed)
—Order3 20@8.00 (non-displayed)

Non-Priority Customer non-displayed, pro-rata

—Order5 5@8.00
Remaining Sell 4@8.00 rests on the order book

4. Primary Market Maker Allocation Where It Is 30% and With 5 Lot Include Rounding

30% example below in #4

5 lot:
Primary Market Maker quote 10@8.00 × 10@12.00 (at NBBO)
Order1 Firm Sell 10 @12.00
Order2 Firm Sell 10 @12.00
Buy 5@12.00
Buy order trades with Primary Market Maker *quote 5@12.00 pursuant to Section 10(c)(1)(B)(a)*

5. Primary Market Maker's Size Pro-Rata Share Pursuant Section 10(c)(1)(E) (''All Other Remaining Interest'')

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100 @12.00
Order2 Firm sell 100 @12.00
MM quote 10@8.00 × 10@11.95
Buy 110@12.00

Buy order trades with: Best price

—MM quote 10@11.95
Final price, other interest Size Pro-Rata

Primary Market Maker is allocated the Size Pro-Rate quantity pursuant to Section 10(c)(1)(B)(i)(b). This allocation quantity was greater than 30% allocation pursuant to 10(c)(1)(B)(i)(a).
—Primary Market Maker quote 34@12.00
—Order1 33@12.00
—Order2 33@12.00

6. Primary Market Maker Is Preferenced Market Maker and Gets Preferenced Allocation

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100@12.00
MM1 Quote 100@8.00 × 100@12.00
MM2 Quote 100@8.00 × 100@12.00
Buy order 100 @12.00, preferenced to Primary Market Maker

Buy order trades with: Prefereced Market Maker 40% priority share pursuant to Section 10(c)(1)(c)(i)(a).

—Primary Market Maker quote 40@12.00

Pro-rata with other interest:
—Order1 20@12.00
—MM1 Quote 20@12.00
—MM2 Quote 20@12.00

7. Primary Market Maker and Preferenced Market Maker Are Not The Same

Primary Market Maker quote 100@8.00 × 100@12.00 (at NBBO)
Order1 Firm sell 100@12.00
MM1 Quote 100@8.00 × 100@12.00 (at NBBO)
MM2 Quote 100@8.00 × 100@12.00
Buy order 100 @12.00, preferenced to MM1

Buy order trades with: Preferenced Market Maker 40% priority share pursuant to Section 10(c)(1)(c)(i)(a).

—MM1 Quote 40@12.00

Pro-rata with other interest:

—Primary Maker Maker quote 20@12.00
—Order1 20@12.00
—MM2 Quote 20@12.00

Other Changes

The Exchange proposes to amend Supplementary Material .04 to Options 3, Section 3 ''Minimum Trading Increments'' to remove language concerning quoting.[21] The Exchange filed a rule change to no longer offer Complex Order quoting.[22] The reference to Complex Order quoting in Options 3, Section 3 was inadvertently not removed in that Prior Rule Change. The Exchange proposes to amend the rule text of Supplementary Material .04 to Options 3, Section 3 to provide, ''Notwithstanding any other provision of this Rule, complex strategies may be traded in the increments described in Options 3, Section 14(c)(1).''

Finally, the Exchange proposes to amend the title of Options 6, Section 1 from ''Clearing Member Give Up'' to ''Authorization to Give Up'' because it better describes the rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange's proposal to reorganize Options 3, Section 10, add additional context and provide for limitations in the Opening Process and the auctions is consistent with the Act because the additional organization and detail will bring greater transparency to the Exchange's rule. Proposed Options 3, Section 10(a)(ii) reflects the current System. This rule change does not amend the current System.

Specifically, with respect to zero-bid options series, indicating that Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process will be posted at a price equal to the minimum trading increment as defined in Options 3, Section 3 will provide additional information to Members about the Exchange's current practice. The Exchange believes that providing Members with the anticipated outcome of submitting zero-bid Market Orders will remove impediments to and perfect the mechanism of a free and open market.

The Exchange proposes to replace the words ''other Professional Orders and market maker quotes'' with ''other non-Priority Customer orders and Market Maker quotes.'' The Exchange believes that the term ''non-Priority Customer'' reduces any confusion regarding any reference to Professional Order or Professional Customer. Orders and quotes are counted individually for purposes of allocation even if they are from the same market participant. This amendment is not a change to current System operations.

The Exchange's proposal to replace the term ''best price'' with ''NBBO'' is consistent with the Act because it will provide greater transparency to the allocation process. The best price in this case is the NBBO. The amendment to this term does not reflect a substantive change to the current System. With respect to a Primary Market Maker's quote, the quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. The ''NBBO'' is the best Protected Bid and Protected Offer as defined in the Options Order Protection and Locked/Crossed Markets Plan; Protected Bids and Protected Offers that are displayed at a price but available on the Exchange at a better non-displayed price shall be included in the NBBO at their better non-displayed price for purposes of this rule.[25]

Providing a more detailed description of the manner in which the System applied Size Pro-Rata allocation in the current rule text, which is not currently contained in current Options 3, Section 10, is consistent with the Act because expanding upon the Exchange's current

[21] Supplementary Material .04 to Options 3, Section 3 currently states, ''Notwithstanding any other provision of this Rule, complex strategies may be quoted and traded in the increments described in Options 3, Section 14(c)(1).''

[22] *See* Securities Exchange Act Release No. 85308 (March 13, 2019), 84 FR 10136 (March 19, 2019) (SR–ISE–2019–05). (''Prior Rule Change'').

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* 17 CFR 242.600(b)(43).

practice will further detail for Members the manner in which allocation occurs in the System. The Exchange's proposal is not intended to change the Exchange's allocation methodology, rather the Exchange is proposing to make clear the manner in which allocation is structured within the System. Further the Exchange's proposal to describe the manner in which orders are allocated to various types of market participants by category of participant and the possible outcomes if multiple allocations apply is consistent with the Act because understanding the potential outcomes protects investors and the public interest by increasing transparency. The Exchange's proposal to relocate current rule text into the current rule and provide additional detail including limitations for Preferred Market Maker participation entitlements during the Opening Process and limitations on allocations of Orders of 5 Contracts or Fewer during the Opening Process and auctions will increase transparency for the protection of investors and the public interest. These limitations exist today. Finally, the Exchange believes that including all potential scenarios for allocation Orders of 5 Contracts or Fewer more clearly explains the Exchange's current allocation process. The Exchange believes that providing more detail benefits investors and the public interest. The Exchange's proposal to amend Options 3, Section 3 to remove obsolete language and amend the title of Options 6, Section 1will bring additional clarity to the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal does not amend the current manner in which the Exchange allocates interest among market participants. The amendments to the rule reflect the manner in which the current System operates. The Exchange notes that Priority Customers will continue to be afforded certain allocation rights which are not available to other market participants. This is the case today. Primary Market Makers and Preferred Market Makers will continue to be afforded certain entitlements because of the continuing obligations they are bound to with respect to provide liquidity and quoting on the Exchange.[26] The Exchange notes that other market participants will continue to be allocated in the same manner as they are today on a Size Pro-Rata basis after other entitlements have been allocated. The Exchange believes the proposed rule provides more detail and offers more transparency into the allocation process.

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)(iii) of the Act[27] and subparagraph (f)(6) of Rule 19b–4 thereunder.[28]

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–ISE–2019–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2019–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2019–21 and should be submitted on or before October 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20154 Filed 9–17–19; 8:45 am]

BILLING CODE 8011–01–P

[26] *See* ISE Rule Options 2, Section 3.

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[29] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10879]

30-Day Notice of Proposed Information Collection: Application for A, G, or NATO Visa

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to October 18, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, can be sent to Taylor Beaumont, who may be reached over telephone at (202) 485–8910 or email at *PRA_BurdenComments@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for A, G, or NATO Visa.
- *OMB Control Number:* 1405–0100.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–1648.
- *Respondents:* Foreign Government Officials.
- *Estimated Number of Respondents:* 30,000.
- *Estimated Number of Responses:* 30,000.
- *Average Time per Response:* 15 Minutes.
- *Total Estimated Burden Time:* 7,500.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain 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 Department of State will use Form DS–1648 to elicit information from applicants who are applying for an A, G, or NATO visa in the United States, excluding applicants for an A–3, G–5 or NATO–7 visa. Sections 101(a)(15)(A) and (G) of the Immigration and Nationality Act (INA), and 22 CFR 41.25, 41.26, and 41.27, describe the criteria for these nonimmigrant visa classifications.

Methodology

The DS–1648 will be submitted electronically to the Department. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing.

Edward J. Ramotowski,

Deputy Assistant Secretary.

[FR Doc. 2019–20165 Filed 9–17–19; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board (Board) has received a request from the Southern California Association of Governments (WB19–44—9/4/19) for permission to use select data from the Board's 2017 Unmasked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB19–44.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2019–20171 Filed 9–17–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2019–56]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 8, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0619 using any of the following methods:

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

Privacy: 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 *http://www.regulations.gov,* as

described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Justin Barcas (202) 267–7023, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 12, 2019.

James M. Crotty,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0619.

Petitioner: The Uninsured Skydive Atlanta, dba Skydive Atlanta and Atlanta Skydiving University.

Section(s) of 14 CFR Affected: § 105.45(a)(1)(i).

Description of Relief Sought: The petitioner requests that students who complete a study course/job training to become a certified tandem parachutist in command from Skydive Atlanta and Atlanta Skydiving University be exempt from the requirement in § 105.45(a)(1)(i) to have three (3) years of experience in parachuting to use a tandem parachute system.

[FR Doc. 2019–20198 Filed 9–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2019–58]

Petition for Exemption; Summary of Petition Received; The Boeing Company

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 30, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0749 using any of the following methods:

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

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda Robeson (202) 267–4712, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 12, 2019.

James M. Crotty,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0749.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: §§ 61.75(d)(2), and 61.117.

Description of Relief Sought: The Boeing Company (Boeing) is petitioning for relief from the requirements of 14 CFR 61.75(d)(2) and 61.117 for pilots of Foreign Civil Aviation Authorities (FCAA) obtaining an FAA Private Pilot certificate based on a foreign license. The exemption being requested would: (1) Allow FCAA pilots to obtain a FAA Private Pilot certificate with appropriate ratings without having to take the Instrument written test of 14 CFR 61.75(d)(2), and (2) Permit those pilots to act as Second-in-Command during FCAA evaluation flights of Boeing airplanes operated under Special Airworthiness Certificates in the category of Experimental for the purpose of Research and Development and/or showing compliance with regulations.

[FR Doc. 2019–20199 Filed 9–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA 2019–0659]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Reduction of Fuel Tank Flammability on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The FAA's Fuel Tank Flammability Safety rulemaking requires manufacturers to provide a report to the FAA every 6 months for up to 5 years after the flammability reduction system is incorporated into the fleet. The data collection is needed to assure system performance meets that predicted at the time of certification.

DATES: Written comments should be submitted by November 18, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Michael E. Dostert, Federal Aviation Administration, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA 98198.

By fax: 206–231–3168.

FOR FURTHER INFORMATION CONTACT: Michael E. Dostert by email at: *Mike.Dostert@faa.gov;* phone: 206–231–3168.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0710.

Title: Reduction of Fuel Tank Flammability on Transport Category Airplanes.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Design approval holders use flammability analysis documentation to demonstrate to their FAA Oversight Office that they are compliant with the Fuel Tank Flammability Safety rule (73 FR 42443). Semi-annual reports submitted by design approval holders provide listings of component failures discovered during scheduled or unscheduled maintenance so that the reliability of the flammability reduction means can be verified by the FAA.

Respondents: Approximately five design approval holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 4,000 hours.

Issued in Washington, DC.

Joy Wolf,

Directives & Forms Management Officer (DMO/FMO), Aircraft Certification Service.

[FR Doc. 2019–20163 Filed 9–17–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2019 Competitive Funding Opportunity: Pilot Program for Transit-Oriented Development Planning

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for approximately $19.19 million of funding under the Pilot Program for Transit-Oriented Development Planning (Catalog of Federal Domestic Assistance #20.500). As required by federal transit law and subject to funding availability, funds will be awarded competitively to support comprehensive planning associated with new fixed guideway and core capacity improvement projects.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. EDT November 18, 2019. Prospective applicants should initiate the process by registering on the *GRANTS.GOV* website promptly to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *https://www.transit.dot.gov/TODPilot* and in the ''FIND'' module of *GRANTS.GOV.* The *GRANTS.GOV* funding opportunity ID is FTA–2019–010–TPE. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Ken Cervenka, FTA Office of Planning and Environment, (202) 493–0512, or *Ken.Cervenka@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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A. Program Description

Section 20005(b) of the Moving Ahead for Progress in the 21st Century Act (MAP–21; Pub. L. 112–141, July 6, 2012), with funding authorized by 49 U.S.C. 5338(a)(2)(B), authorizes FTA to award funds under the Pilot Program for Transit-Oriented Development (TOD) Planning (TOD Pilot Program) through a competitive process, as described in this notice, to local communities to integrate land use and transportation planning with a new fixed guideway or core capacity improvement transit capital project as defined in Federal transit statute. (See section C of this NOFO for more information about eligibility.)

As outlined in MAP–21, the TOD Pilot Program is intended to fund comprehensive planning that supports economic development, ridership, multimodal connectivity and accessibility, increased transit access for pedestrian and bicycle traffic, and mixed-use development near transit stations. The TOD Pilot Program also encourages identification of infrastructure needs and engagement with the private sector.

Consistent with direction in MAP–21, FTA is seeking comprehensive planning projects covering an entire transit capital project corridor, rather than proposals that involve planning for individual station areas or only a small section of the corridor. To ensure any proposed planning work reflects the needs and aspirations of the local community and results in concrete, specific deliverables and outcomes, transit project sponsors must partner with entities with land use planning authority in the transit project corridor to conduct the planning work.

B. Federal Award Information

Federal transit law authorizes FTA to make grants for eligible comprehensive planning projects under Section 20005(b) of MAP–21, with funding authorized by 49 U.S.C. 5338(a)(2)(B). FTA intends to award all available funding to selected applicants responding to this NOFO.

Only proposals from eligible recipients for eligible activities will be considered for funding. FTA anticipates minimum grant awards of $250,000 and maximum grant awards of $2,000,000.

C. Eligibility Information

1. Eligible Applicants

Applicants under the TOD Pilot Program must be FTA grantees (*i.e.,* existing direct and designated recipients) as of the publication date of this NOFO. An applicant must either be the project sponsor of an eligible transit capital project as defined below in section C, subsection 3 or an entity with land use planning authority in an eligible transit capital project corridor. Except in cases where an applicant is both the sponsor of an eligible transit

project and has land use authority in at least a portion of the transit project corridor, the transit project sponsor and at least one entity in the project corridor with land use planning authority must partner on the proposed comprehensive planning project. Documentation of this partnership must be included with the application; see section D, subsection 2 of this NOFO for further information.

Only one application per transit capital project corridor may be submitted to FTA. Multiple applications submitted for a single transit capital project corridor indicate that partnerships are not in place and FTA will reject all of the applications.

2. Cost Sharing or Matching

The maximum Federal funding share is 80 percent.

Eligible sources of local match include the following: cash from non-Government sources other than revenues from providing public transportation services; revenues derived from the sale of advertising and concessions; amounts received under a service agreement with a State or local social service agency or private social service organization; revenues generated from value capture financing mechanisms; or funds from an undistributed cash surplus; replacement or depreciation cash fund or reserve; or new capital. In-kind contributions are permitted. Transportation Development Credits (formerly referred to as Toll Revenue Credits) may not be used to satisfy the local match requirement. FTA may prioritize projects proposed with a higher non-Federal share.

3. Other Eligibility Criteria

i. Eligible Transit Projects

Any comprehensive planning work proposed for funding under the TOD Pilot Program must be associated with an eligible transit capital project. Although not required to be part of the Capital Investment Grant program, to be eligible, the proposed transit capital project must be a new fixed guideway project or a core capacity improvement project as defined in Section 5309(a) of title 49, United States Code.

A fixed guideway is a public transportation facility:

(A) using and occupying a separate right-of-way for the exclusive use of public transportation;

(B) using rail;

(C) using a fixed catenary system;

(D) for a passenger ferry system; or

(E) for a bus rapid transit system.

A new fixed guideway capital project is defined in statute to be:

(A) a new fixed guideway project that is a minimum operable segment or extension to an existing fixed guideway system; or

(B) a fixed guideway bus rapid transit project that is a minimum operable segment or an extension to an existing bus rapid transit system.

A fixed guideway bus rapid transit project is defined more specifically in statute as a bus capital project:

(A) In which the majority of the project operates in a separated right-of-way dedicated for public transportation use during peak periods;

(B) that represents a substantial investment in a single route in a defined corridor or subarea; and

(C) that includes features that emulate the services provided by rail fixed guideway public transportation systems, including:

(i) Defined stations;

(ii) traffic signal priority for public transportation vehicles;

(iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and

(iv) any other features the Secretary may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail fixed guideway public transportation systems.

A core capacity improvement project is defined in statute as a substantial corridor-based capital investment in an existing fixed guideway system that increases the capacity of the corridor by not less than 10 percent. The term does not include project elements designed to maintain a state of good repair of the existing fixed guideway system.

Comprehensive planning work in a corridor for a transit capital project that does not meet the statutory definition above of either a new fixed guideway project or a core capacity improvement project is not eligible under the TOD Pilot Program.

ii. Eligible Activities

Any comprehensive planning efforts funded under the TOD Pilot Program must address all six aspects of the general authority stipulated in Section 20005(b)(2) of MAP–21:

i. Enhances economic development, ridership, and other goals established during the project development and engineering processes;

ii. facilitates multimodal connectivity and accessibility;

iii. increases access to transit hubs for pedestrian and bicycle traffic;

iv. enables mixed-use development;

v. identifies infrastructure needs associated with the eligible project; and

vi. includes private sector participation.

MAP–21 also requires the comprehensive planning effort to advance the metropolitan planning organization's metropolitan transportation plan. Further, MAP–21 requires applicants to establish performance criteria for the comprehensive planning effort.

Following are examples of the types of substantial deliverables that may result from the comprehensive planning work. Substantial deliverables are reports, plans and other materials that represent the key accomplishments of the comprehensive planning effort and that must be submitted to FTA as each is completed. Substantial deliverables may include, but are not restricted to, the following:

i. A comprehensive plan report that includes corridor development policies and station development plans, a proposed timeline, and recommended financing strategies for these plans;

ii. A strategic plan report that includes corridor specific planning strategies and program recommendations to support comprehensive planning;

iii. Revised TOD-focused zoning codes and/or resolutions;

iv. A report evaluating and recommending financial tools to encourage TOD implementation such as land banking, value capture, and development financing;

v. Policies to encourage TOD, including actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing; and/or

vi. Local or regional resolutions to implement TOD plans and/or establish TOD funding mechanisms.

iii. Ineligible Activities

Applications should not include the following activities:

i. TOD planning work in a single transit capital project station area;

ii. Transit project development activities that would be reimbursable under an FTA capital grant, such as project planning, the design and engineering of stations and other facilities, environmental analyses needed for the transit capital project, or costs associated with specific joint development activities;

iii. Capital projects, such as land acquisition, construction, and utility relocation; and

iv. Site- or parcel-specific planning, such as the design of individual structures.

D. Application and Submission Information

1. Address

Applications must be submitted electronically through GRANTS.GOV. General information for submitting applications through GRANTS.GOV can be found at *https://www.transit.dot.gov/funding/grants/applying/applying-fta-funding* along with specific instructions for the forms and attachments required for submission. Mail and fax submissions will not be accepted.

2. Content and Form of Application Submission

Proposals should include only a completed SF 424 Mandatory form (downloaded from *GRANTS.GOV*) and the following attachments to the completed SF 424:

i. A completed Applicant and Proposal Profile supplemental form for the TOD Pilot Program (supplemental form) found on the FTA website at *https://www.transit.dot.gov/TODPilot.* The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice;

ii. A map of the proposed study area showing the transit project alignment and stations, major roadways, major landmarks, and the geographic boundaries of the proposed comprehensive planning activities;

iii. Documentation of a partnership between the transit project sponsor and an entity in the project corridor with land use planning authority to conduct the comprehensive planning work, if the applicant does not have both of these responsibilities. Documentation may consist of a memorandum of agreement or letter of intent signed by all parties that describes the parties' roles and responsibilities in the proposed comprehensive planning project; and

iv. Documentation of any funding commitments for the proposed comprehensive planning work.

Information such as the applicant's name, Federal amount requested, local match amount, description of the study area, etc. may be requested in varying degrees of detail on both the SF 424 form and supplemental form. Applicants must fill in all fields unless stated otherwise on the forms. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' buttons on both forms to check all required fields, and ensure that the Federal and local amounts specified are consistent. In the event of errors with the supplemental form, FTA recommends saving the form on your computer and ensuring that JavaScript is enabled in your PDF reader. The information listed below MUST be included on the SF 424 and supplemental forms for TOD Pilot Program funding applications.

The SF 424 and supplemental form will prompt applicants to address the following items:

1. Provide the name of the lead applicant and, if applicable, the specific co-sponsors submitting the application.

2. Provide the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number.

3. Provide contact information including: Contact name, title, address, phone number, and email address.

4. Specify the Congressional district(s) where the planning project will take place.

5. Identify whether the planning project is located in a qualified opportunity zone designated pursuant to *26 U.S.C. 1400Z–1*.

6. Identify the project title and project scope to be funded, including anticipated substantial deliverables and the milestones at when they will be provided to FTA.

7. Identify and describe an eligible transit project that meets the requirements of section C, subsection 3 of this notice.

8. Provide evidence of a partnership between the transit project sponsor and at least one agency with land use authority in the transit capital project corridor, as described earlier in this subsection.

9. Address the six aspects of general authority under MAP–21 Section 20005(b)(2).

10. Address each evaluation criterion separately, demonstrating how the project responds to each criterion as described in section E.

11. Provide a line-item budget for the total planning effort, with enough detail to indicate the various key components of the comprehensive planning project.

12. Identify the Federal amount requested.

13. Document the matching funds, including amount and source of the match (may include local or private sector financial participation in the project). Describe whether the matching funds are committed or planned, and include documentation of the commitments.

14. Address whether other Federal funds have been sought or received for the comprehensive planning project.

15. Provide a schedule and process for the development of the comprehensive plan that includes anticipated dates for incorporating the planning work effort into the region's unified planning work program, completing major tasks and substantial deliverables, and completing the overall planning effort.

16. Describe how the comprehensive planning work advances the metropolitan transportation plan of the metropolitan planning organization.

17. Propose performance criteria for the development and implementation of the comprehensive planning work.

18. Identify potential State, local or other impediments to the products of the comprehensive planning work and its implementation, and how the work will address them.

FTA will not consider any additional materials submitted by applicants in its evaluation of proposals. The total length of the completed supplemental form and documentation of partnerships and funding commitments should be no more than 15 pages.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) Register in SAM before submitting an application; (2) provide a valid unique entity identifier; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. These requirements do not apply if the applicant: (1) Is an individual; (2) is excepted from the requirements under 2 CFR 25.110(b) or (c); or (3) has an exception approved by FTA under 2 CFR 25.110(d). FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. Registration in SAM may take as little as 3–5 business days, but since there could be unexpected steps or delays, FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *http://www.GRANTS.GOV* by 11:59 p.m. November 18, 2019. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will only be considered under

extraordinary circumstances not under the applicant's control. Mail and fax submissions will not be accepted.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV:* (1) Confirmation of successful transmission to *GRANTS.GOV;* and (2) confirmation of successful validation by *GRANTS.GOV*. FTA will then validate the application and will attempt to notify any applicants whose applications could not be validated. If the applicant does not receive confirmation of successful validation or a notice of failed validation or incomplete materials, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission. An application that is submitted at the deadline and cannot be validated will be marked as incomplete, and such applicants will not receive additional time to re-submit.

Any addenda that FTA releases on the application process will be posted at *https://www.transit.dot.gov/TODPilot.* Important: FTA urges applicants to submit their applications at least 96 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website at *http://www.GRANTS.GOV*. Deadlines will not be extended due to scheduled maintenance or outages.

Applicants are encouraged to begin the registration process on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in the System for Award Management (SAM) is renewed annually and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions. Instructions on the *GRANTS.GOV* registration process are listed in Appendix A.

5. Funding Restrictions

See section C of this NOFO for detailed eligibility requirements. FTA emphasizes that any comprehensive planning projects funded through the TOD Pilot Program must be associated with an eligible transit project, specifically a new fixed guideway project or a core capacity improvement project as defined in Federal transit statute, 49 U.S.C. 5309(a). Projects are not required to be within the Capital Investment Grant Program.

6. Other Submission Requirements

Project proposals must be submitted electronically through *http://www.GRANTS.GOV* by 11:59 p.m. E.D.T. on November 18, 2019. Mail and fax submissions will not be accepted.

E. Application Review Information

1. Criteria

FTA will evaluate proposals that include all components identified in section D of this notice according to the following three criteria:

a. Demonstrated Need

FTA will evaluate each project to determine the need for funding based on the following factors:

i. Potential state, local or other impediments to implementation of the products of the comprehensive planning effort, and how the workplan will address them;

ii. How the proposed work will advance TOD implementation in the corridor and region;

iii. Justification as to why Federal funds are needed for the proposed work; and

iv. Extent to which the transit project corridor could benefit from TOD planning.

b. Strength of the Work Plan, Schedule and Process

FTA will evaluate the strength of the work plan, schedule and process included in an application based on the following factors:

i. Extent to which the schedule contains sufficient detail, identifies all steps needed to implement the work proposed, and is achievable;

ii. The proportion of the project corridor covered by the work plan;

iii. Extent of partnerships, including with non-public sector entities;

iv. The partnerships' technical capability to develop, adopt and implement the comprehensive plans, based on FTA's assessment of the applicant's description of the policy formation, implementation, and financial roles of the partners, and the roles and responsibilities of proposed staff; and

v. Whether the performance measures identified in the application relate to the goals of the comprehensive planning work.

c. Funding Commitments

FTA will assess the status of local matching funds for the planning work. Applications demonstrating that matching funds for the proposed comprehensive planning work are committed will receive higher ratings from FTA on this factor. Proposed comprehensive planning projects for which matching funding sources have been identified, but are not yet committed, will be given lower ratings under this factor by FTA, as will proposed comprehensive planning projects for which in-kind contributions constitute the primary or sole source of matching funds.

2. Review and Selection Process

In addition to other FTA staff that may review the proposals, a technical evaluation committee will evaluate proposals based on the published evaluation criteria. Members of the technical evaluation committee and other FTA staff may request additional information from applicants, if necessary. Based on the findings of the technical evaluation committee, the FTA Administrator will determine the final selection of projects for program funding. Among the factors, in determining the allocation of program funds FTA may consider geographic diversity, diversity in the size of the grantees receiving funding, projects located in or that support public transportation service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z–1, and/or the applicant's receipt of other competitive awards. FTA may prioritize projects proposed with a higher local share.

In addition to the criteria and considerations outlined in this section, the FTA Administrator will take into account the following key Departmental objectives:

(A) Supporting economic vitality at the national and regional level;

(B) Leveraging Federal funding to attract other, non-Federal sources of infrastructure investment, including value capture;

(C) Using innovative approaches to improve safety and expedite project delivery;

(D) Encourage State and local and tribal governments to reduce regulatory barriers that unnecessarily raise the costs of housing development or impede

the development of affordable housing; and

(E) Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in the 2 CFR 200.205 Federal awarding agency review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

The FTA Administrator will announce the final project selections on the FTA website. Project recipients should contact their FTA Regional Offices for additional information regarding allocations for projects under the TOD Pilot Program. FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection; see subsection 3 below for further information.

2. Award Administration

Funds under the TOD Pilot Program are available to existing FTA grantees. The anticipated minimum and maximum award amounts are $250,000 and $2,000,000, respectively. Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, applicants that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed comprehensive planning projects are still viable and can be completed with the amount awarded.

3. Administrative and National Policy Requirements

i. Pre-Award Authority

FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for competitive funds until projects are selected and even then there are Federal requirements that must be met before costs are incurred. Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA award of a Grant Agreement until FTA has issued pre-award authority for selected projects, or unless FTA has issued a ''Letter of No Prejudice'' for the project before the expenses are incurred. For more information about FTA's policy on pre-award authority, please see the FY 2019 Apportionment Notice published on July 3, 2019. *https://www.govinfo.gov/content/pkg/FR-2019-07-03/pdf/2019-14248.pdf.*

ii. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). Recipients of TOD Pilot Program funds are subject to the grant requirements of the Section 5303 Metropolitan Planning program, including those of FTA Circular 8100.1C and Circular 5010.1E. All competitive grants, regardless of award amount, will be subject to the Congressional Notification and release process. Technical assistance regarding these requirements is available from each FTA regional office.

iii. Planning

FTA encourages applicants to notify the appropriate metropolitan planning organizations in areas likely to be served by the funds made available under this program. Selected projects must be incorporated into the unified planning work programs of metropolitan areas before they are eligible for FTA funding or pre-award authority.

iv. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

4. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system on a quarterly basis. Awardees must also submit copies of the substantial deliverables identified in the work plan to the FTA regional office at the corresponding milestones.

G. Federal Awarding Agency Contact

For program-specific questions, please contact Ken Cervenka, Office of Planning and Environment, (202) 493–0512, email: *Ken.Cervenka@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS). Any addenda that FTA releases on the application process will be posted at *https://www.transit.dot.gov/TODPilot.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties. FTA staff may also conduct briefings on the FY 2019 competitive grants selection and award process upon request.

H. Technical Assistance and Other Program Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' FTA will consider applications for funding only from eligible recipients for eligible projects as listed in Section C.

Complete applications must be submitted through *Grants.gov* by 11:59 p.m. EDT November 18, 2019. For issues with *Grants.gov* please contact *Grants.gov* by phone at 1–800–518–4726 or by email at *support@grants.gov.* Contact information for FTA's regional offices can be found on FTA's website at *www.transit.dot.gov.*

K. Jane Williams,

Acting Administrator.

Appendix A

Registration in Sam and Grants.gov

Registration in Brief:

Registration takes approximately 3–5 business days, but allow 4 weeks for completion of all steps.

Step 1: Obtain DUNS Number

Same day. If requested by phone (1–866–705–5711) DUNS is provided immediately. If your organization does not have one, you will need to go to the Dun & Bradstreet website at *http://fedgov.dnb.com/webform* [EXIT Disclaimer] to obtain the number. ** Information for Foreign Registrants.*Webform requests take 1–2 business days.*

Step 2: Register With SAM

Three to five business days or up to two weeks. If you already have a TIN, your SAM registration will take 3–5 business days to process. If you are applying for an EIN please allow up to 2 weeks. Ensure that your organization is registered with the System for Award Management (SAM) at System for Award Management (SAM). If your organization is not, an authorizing official of your organization must register.

Step 3: Username & Password

Same day. Complete your AOR (Authorized Organization Representative) profile on *Grants.gov* and create your username and password. You will need to use your organization's DUNS Number to complete this step. *https://apply07.grants.gov/apply/OrcRegister.*

Step 4: AOR Authorization

**Same day.* The E-Business Point of Contact (E-Biz POC) at your organization must login to *Grants.gov* to confirm you as an Authorized Organization Representative (AOR). Please note that there can be more than one AOR for your organization. In some cases the E-Biz POC is also the AOR for an organization. **Time depends on responsiveness of your E-Biz POC.*

Step 5: Track AOR Status

At any time, you can track your AOR status by logging in with your username and password. Login as an Applicant (enter your username & password you obtained in Step 3) using the following link: *Applicant_profile.jsp.*

[FR Doc. 2019–20192 Filed 9–17–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Relating to Electronic Payee Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the requirements relating to electronic payee statements.

DATES: Written comments should be received on or before November 18, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Payee Statements.

OMB Number: 1545–1729.

Regulatory Number: TD 9114.

Abstract: This collect contains final regulations, TD 9114 (published February 18, 2004 [69 FR 7567]), relating to the voluntary electronic furnishing of statements on Forms W–2, ''Wage and Tax Statement,'' under sections 6041 and 6051, and statements on Forms 1098–T, ''Tuition Statement,'' and Forms 1098–E, ''Student Loan Interest Statement,'' under section 6050S. These final regulations affect businesses, other for-profit institutions, and eligible educational institutions that wish to furnish these required statements electronically. The regulations will also affect individuals (recipients), principally employees, students, and borrowers, who consent to receive these statements electronically.

Current Actions: There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 15,200.

Estimated Time per Respondent: 6 mins.

Estimated Total Annual Burden Hours: 2,844,950.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: September 9, 2019.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2019–20167 Filed 9–17–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Agency Information Collection Activity Under OMB Review: State Application for Interment Allowance Under 38 U.S.C. Chapter 23

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 18, 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.2900–0565'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: State Application for Interment Allowance Under 38 U.S.C. Chapter 23, VA Form 21P–530a.

OMB Control Number: 2900–0565.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–530a is used to gather the information required to determine whether a State is eligible for interment allowances for eligible veterans who have been buried in a State Veterans' cemetery. Without this information, VBA would be unable to properly determine eligibility and pay benefits due to a State.

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 126 on July 1, 2019, page 31390.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,875.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 46,500.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–20135 Filed 9–17–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 181 September 18, 2019

Part II

The President

Proclamation 9927—National Hispanic Heritage Month, 2019

Proclamation 9928—National Gang Violence Prevention Week, 2019

Presidential Determination No. 2019–23 of September 13, 2019—Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 84, No. 181
Wednesday, September 18, 2019

Presidential Documents

Title 3—

The President

Proclamation 9927 of September 13, 2019

National Hispanic Heritage Month, 2019

By the President of the United States of America

A Proclamation

National Hispanic Heritage Month celebrates the accomplishments of Hispanic Americans, who have enriched our culture and society and helped make America into the incredible country it is today. Hispanic-American men and women embody the American values of devotion to faith and family, hard work, and patriotism through their countless contributions as leaders, innovators, entrepreneurs, and members of our Armed Forces.

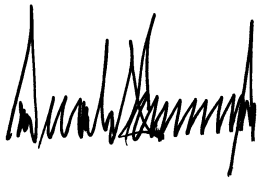
Since I took office, Hispanic-American unemployment rates and poverty rates have hit record lows. My Administration is always working to create an environment that fosters opportunity for all Americans. That is why I signed the pro-growth Tax Cuts and Jobs Act, which has put more money in the pockets of American workers and has given businesses more money to invest in their employees. This historic legislation also created Opportunity Zones that are driving investment toward and revitalizing distressed communities. My Administration has slashed unnecessary and burdensome regulations to allow entrepreneurs to use their creativity to contribute to our economic growth. Our thriving economy is enabling more Hispanic Americans to achieve the American Dream.

Additionally, we have worked to strengthen our economic and political relationship with our Latin American partners. We successfully renegotiated the North American Free Trade Agreement with the signing of the United States-Mexico-Canada Agreement (USMCA), a trade deal that will benefit all parties and American workers. Once approved by the Congress, USMCA will protect jobs, ensure fair trade, bolster our economies, and allow our nations to prosper. We have also worked to support liberty by standing with the community of democracies in the Western Hemisphere against the authoritarian regimes in Venezuela, Cuba, and Nicaragua. The United States has strong security and economic interests in a safe and prosperous Latin America.

This month, we honor Hispanic Americans for their countless contributions to our Nation. Through their dedication to family, community, and our country, they help to build a better future for all Americans. To honor the achievements of Hispanic Americans, the Congress, by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 15 through October 15, 2019, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all Americans to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2019–20363
Filed 9–17–19; 11:15 am]
Billing code 3295–F9–P

Presidential Documents

Proclamation 9928 of September 13, 2019

National Gang Violence Prevention Week, 2019

By the President of the United States of America

A Proclamation

My Administration has successfully indicted, convicted, imprisoned, and removed from our country ruthless members of gangs and cartels who inflict horrendous acts of violence upon Americans. During National Gang Violence Prevention Week, my Administration renews its dedication to identifying and dismantling the criminal networks that seek to wreak havoc on our communities and to bringing the individuals who participate in them to justice. We also reaffirm our support for the heroes of law enforcement who have taken a sacred pledge to defend the Nation and its people.

Our Nation's law enforcement officers are the first line of defense against acts of evil perpetrated by gang members. My Administration has increased efforts and has devoted considerable resources to catching, prosecuting, and removing these criminals from our streets. We have made tremendous strides by partnering with State, local, and tribal law enforcement to implement new initiatives, such as Project Safe Neighborhoods, that have been successful in creating safer communities through targeted and sustained reductions in gang violence. Because of these efforts, the Department of Justice (DOJ) brought more cases against violent criminals in fiscal year 2018 than ever before. The record progress we have achieved is the result of our tough stance against crime as well as the bravery and hard work of law enforcement officials.

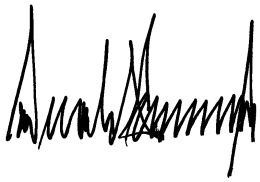
My Administration is also aggressively combating transnational criminal organizations that bring mayhem across our borders and into our country. On our southern border especially, gangs are heavily involved in murder, extortion, narcotics, and weapons trafficking, human smuggling and trafficking, and other nefarious activities. In the first few weeks of my Administration, I signed three executive orders to dismantle transnational criminal organizations and subsidiary organizations, to reduce crime and restore public safety, and to enhance the safety of law enforcement officers. The DOJ is also working with law enforcement in El Salvador, Guatemala, and Honduras to help coordinate the fight against MS–13, the 18th Street Gang, and other dangerous criminal organizations that try to enter the United States in an effort to ravage our communities. This partnership, called Operation Regional Shield, targets gangs at the source and works to ensure that these criminals never reach our borders. So far, the program has resulted in the indictment of more than 7,000 criminal gang members. In the first 2 years of my Administration, Immigration and Customs Enforcement officers made 266,000 arrests of aliens with criminal records, including those charged or convicted of 100,000 assaults, nearly 30,000 sex crimes, and 4,000 violent killings. My first duty is to care for our Nation's citizens, and my Administration remains committed to securing the border and stopping criminal gangs, drug smugglers, and human traffickers.

This week, we renew our pledge to defeat criminal gangs and protect our Nation's communities from violent crime so that all Americans have the opportunity to live in safety and peace. We express our deep gratitude to the selfless men and women of our law enforcement agencies who risk their lives protecting our communities. We also pay tribute to the innocent

victims of gang violence and pray for their families. Let us honor them by redoubling our efforts to root out and eliminate brutal gangs that threaten our society.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week of September 15 through September 21, 2019, as ''National Gang Violence Prevention Week.'' I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2019–20365
Filed 9–17–19; 11:15 am]
Billing code 3295–F9–P

Presidential Documents

Presidential Determination No. 2019–23 of September 13, 2019

Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

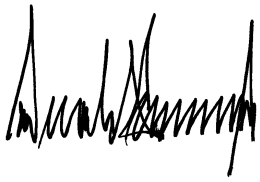
Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. 4305 note), and a previous determination on September 10, 2018 (83 *FR* 46347, September 12, 2018), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to expire on September 14, 2019.

I hereby determine that the continuation of the exercise of those authorities with respect to Cuba for 1 year is in the national interest of the United States.

Therefore, consistent with the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2020, the exercise of those authorities with respect to Cuba, as implemented by the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 13, 2019

[FR Doc. 2019–20366
Filed 9–17–19; 11:15 am]
Billing code 4811–33–P

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